

FIQH MUAMALAH

ISLAMIC BUSINESS TRANSACTION





INTRODUCTION TO ISB540



COURSE BACKGROUND

Course code	:	ISB540
Course name	:	Islamic Business Transactions
Level	:	Degree
Credit hour	:	3
Contact hour	:	4
Part	:	4
Status	:	Elective
Prerequisite	:	None



OBJECTIVE

- ✦ Upon completion of this subject, the student should be able:-
 1. Know in depth the types of business transactions and property management
 2. Examine fiqh muamalat in contemporary Islamic business transactions
 3. Practice the instruments in all activities relating to the banking system



COURSE DESCRIPTION

- ◆ This subject is the continuation of Islamic Law of Property. It will expose business transactions as well as property management in Islamic to the students. It will focus on trade, commercial transaction and financial transaction such as savings (wadi'ah), partnership (musyarakay/mudarabah), mortgage (Al-Rahn) and collateral (Al-Kafalah/ Al-Dhamanah)



ASSESSMENT

- | | | |
|------------------------|---|-----|
| 1. Test 1 | : | 15% |
| 2. Test 2 | : | 15% |
| 3. Essay | : | 30% |
| 4. Final Examination : | | 50% |

TOTAL		100%
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ANALYSIS OF ISB540 PAST YEAR QUESTION

	S1 2006	S2 2006	S1 2007	S2 2007	S1 2008	S2 2008	S1 2009	S2 2009	S1 2010	S2 2010	2011
SHARIAH	X	X	X	X	X	X		X	X		*
MUAMALAH	X	X	X	X	X	X	X		X	X	*
RIBA	X	X	X			X	X			X	*
QARDH			X		X		Xd	X	Xd	X	*
KAFALAH					X		Xd	X		Xd	*
RAHN		X		X		X			X	Xd	*
HIWALAH				X	X		Xd		X	Xd	*
MURABAHAH	X	X			Xd			X	Xd	Xd	*
BBA			X		Xd		X	X	Xd	X	*
SALAM	X	X			Xd	X		X	X		*
IJARAH			X	X		X		X	X		*
WADIAH	X	X		X	Xd		X		Xd	X	
WAKALAH			X				X		X	X	
MUSHARAKAH		X	X	X	X	X	Xd	X		X	
MUDHARABAH	X		X	X	X	X	Xd		Xd	X	
SARF		X								Xd	



LIST OF DEFINITION

CONTRACT		DEFINITION
FIQH	L	The true understanding of what is intended
	T	The knowledge of the laws of the Shariah, relating to men's act and that have been derived from specific sources and evidences.
SHARIAH	L	The road to watering place; the straight path to be followed
	T	Rules which are ordained by Allah for His servants by sending His Messenger
MUAMALAH	L	Dealings, social intercourse, behaviour, transaction; to interact
	T	Sharia rules which pertain to widely life
BAY'/ TRADE	L	Buying and selling or both in the same time
	T	The transfer of a definite use of property in perpetuity in exchange for a price
AQAD/ CONTRACT	L	Tying tightly, as in tying a rope. It also means to make covenant and to give an oath.
	T	An engagement and agreement between two persons in a legally accepted, impactful and binding manner
RIBA/ USURY	L	Excess quantity, addition, an increase above its original size or amount
	T	Trade Riba: Unlawful gain derived from the quantitative inequality of the counter-values in any transaction purporting to effect the exchange of 2 or more species which belong to the same genus(category) and are governed by the same efficient cause(illah)
		Debt Riba: A predetermined excess or surplus over and above the loan received by the creditor conditionally in relation to a specified period



LIST OF DEFINITION

CONTRACT		DEFINITION
QARDH/ LOAN/DEBT	L	To cut something off
	T	Specific contract on transferring a specified property to another party on condition that a similar property will be given back in return
QARDH AL-HASSAN	L	Beneficial loan, benevolent loan, gratuitous loan, and beautiful loan
	T	A debt that is free from any type of predetermined condition or promise to repay back more than the original amount stated in the contract
KAFALAH	L	Guaarantee, bail, surety, responsibility, suretyship
	T	The pledge given by the guarator/surety (al-kafil) to a creditor (al-makful lah) on behalf of the principal debtor (al-makful anh) to secure that the guaranteed (al-makful bih) i.E the debtor, will be present at a definite place, e.G to pay his debt, or fine, or, in the case of retaliation, to undergo punishment.
RAHN	L	Constancy, or holding and binding
	T	To make an object with economic values in islamic law perspective as a trust for the payment of debts, so that enabling mortgagee (murtahin) to get all or a part of the debts from the object
HIWALAH	L	To turn over; move or transfer
	T	To make a transfer of a debt from one debtor to the debtor account of another



LIST OF DEFINITION

CONTRACT		DEFINITION
MURABAHAH	L	Increase of profit
	T	Selling a commodity for its purchase price plus a specified mark-up or profit agreed upon
BBA	L	Deferred payment
	T	Sale contract in which the payment of the price is deferred and payable at a certain particular time in the future.
BAY' AL-SALAM	L	Pre-payment
	T	A sale with postponed delivery of the merchandise but immediate payment of the price.
IJARAH	L	Compensation
	T	A contract of proposed and known usufruct with a specified and lawful return or compensation for the effort or work which has been expended.
AITAB	L	Hire-purchase
	T	Owning the benefit of certain assets for a specific period of time, by paying an agreed sums of rental, with an agreement that the owner will transfer the rented asset to the hirer at the end of the agreed period or during the period, provided all rental payments or installments have been made in entirety



LIST OF DEFINITION

CONTRACT		DEFINITION
WADIAH	L	to leave, quit, abandon
	T	contract whereby a person leaves his property for safe protection to another person
WAKALAH	L	Agency, representation, proxy
	T	The appointment of someone to take over the appointer's affairs on his/her behalf for the purpose of accomplishment of certain tasks
MUSHARAKAH	L	Mixing of two properties so that they could not be distinguished from each other
	T	A form of partnership where two or more persons combine either capital or labor or creditworthiness together to carry on a business venture on condition that they will share the profits, enjoying similar rights and liabilities.
MUSHARAKAH MUTANAQISAH	T	Two or more partners purchase any asset (machinery, property, etc.) and their intention is that one or both partners will use this asset or rent out their share and one partner undertakes to purchase the share of other gradually
MUDHARABAH	L	Increase or profit
	T	Mudharabah is a contract or a partnership where one provides the capital and the other the entrepreneurship with the profit being shared among them with a predetermined condition



LIST OF QURANIC VERSES

Bay', Trade, Muamalah, Riba, Murabahah

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

275. but Allah hath Permitted trade and forbidden usury

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ
تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٢٩﴾

29. O ye who believe! eat not up your property among yourselves In vanities: but let there be amongst you traffic and trade by mutual good-will: nor kill (or destroy) yourselves: for Verily Allah hath been to you Most Merciful!

Qardh, Qardh al-hassan, Bay' Salam

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

282. O you who have believed, when you contract a debt for a specified term, write it down.



LIST OF QURANIC VERSES

Qardh al-hassan

إِنْ تُقْرِضُوا اللَّهَ قَرْضًا حَسَنًا يَضْعِفَهُ لَكُمْ وَيَغْفِرْ لَكُمْ وَاللَّهُ شَكُورٌ حَلِيمٌ ﴿١٧﴾

17. if ye loan to Allah, a beautiful loan, He will double it to your (credit), and He will grant you forgiveness: for Allah is Most ready to appreciate (service), Most Forbearing,-

Kafalah

قَالُوا نَفَقْدُ صَوَاعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ ﴿٧٢﴾

72. They said, "We are missing the measure of the king. And for he who produces it is [the reward of] a camel's load, and I am responsible for it."

Rahn

وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَنْ مَّقْبُوضَةً ﴿٢٨٣﴾

283. And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken



LIST OF QURANIC VERSES

Ijarah

فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ

And if they breastfeed for you, then give them their payment

Wadiah

﴿ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا

Indeed, Allah commands you to render trusts to whom they are due

Wakalah

﴿ إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا

Alms are for the poor and the needy, and those employed to administer the (funds)

Mudharabah

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِن فَضْلِ اللَّهِ وَاذْكُرُوا اللَّهَ كَثِيرًا لَّعَلَّكُمْ تُفْلِحُونَ ﴿٢٠٦﴾

Then when the (Jumu'ah) Salât (prayer) is finished, You may disperse through the land, and seek the Bounty of Allah (by working, etc.), and Remember Allah much, that You may be successful.



END

FIQH MUAMALAH

ISLAMIC BUSINESS TRANSACTION



CHAPTER TWO

MUAMALAH



CONTENT

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✱ Muamalat
- ✱ The Concept of Buying and Selling
- ✱ Legal Evidence:
 - ➡ Quran
 - ➡ Sunnah
- ✱ Categories of Transaction
- ✱ Classification of Contracts





MUAMALAT

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✱ Muamalat is plural and the singular word is muamalah. Muamalah is from the verb - aamala
- ✱ Literally
 - ➔ Dealings, social intercourse, behaviour, transaction; to interact. Muamalat means interactions or transactions.
- ✱ Technically
 - ➔ Sharia rules which pertain to widely life
 - ➔ Rules pertain to the action of people and their dealings among themselves as in sale, mortgage, hire disputations, evidences, judgment and the like.
- ✱ Fiqh Muamalat
 - ➔ Knowledge of the rules of conduct pertaining to commercial transactions that has been derived by the jurist from specific evidences in the Quran and Sunnah.
- ✱ Commercial transactions are concluded through contracts which are permitted by the Shariah as evidenced by the Quran, the Sunnah and other sources of Islamic Law.





THE CONCEPT OF BUYING AND SELLING

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✦ Trade or 'al-Bay' in Islam, is an exchange of property (mal) or the
- ✦ exchange of goods with certain procedures
- ✦ Bay' means:
 - ➡ Literally: Buying and selling or both in the same time
 - ➡ Technically: The transfer of a definite use of property in perpetuity in exchange for a price
- ✦ The exchange of property for property by means of mutual consent
- ✦ An exchange of mal or tangible property for similar property





LEGAL EVIDENCE

◆ Quran

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَاَ

275. but Allah hath Permitted trade and forbidden usury

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29. O ye who believe! eat not up your property among yourselves In vanities: but let there be amongst you traffic and trade by mutual good-will: nor kill (or destroy) yourselves: for Verily Allah hath been to you Most Merciful!





LEGAL EVIDENCE

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

✦ Sunnah

- ➞ No one has ever eaten better food than what he eats as a result of the labour of his hands (Sahih al-Bukhari)
- ➞ The merchants will be raised up on the Day of Judgement as evil-doers except those who fear Allah are honest and speak truth (Sunan Ibn Majah)
- ➞ The Prophet (s.a.w) also declares to the effect: The merchants who speaks the truth and honest is in the same place with the Prophets, the Sincerers (lovers of truth) and Martyrs (Sunan Ibn Majah)

✦ Ijma'

- ➞ The Muslims are in agreement unanimously that sale is permitted.
- ➞ Conducting sales is the natural right of the people



CATEGORIES OF TRANSACTIONS

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ◆ Categories of Transactions In General
 - ➞ Barter Trading (Muqayadah)
 - ➞ Cash Trading (Bay' Mutlaq)
 - ➞ Currency Trading (Bay' al-Sarf)



BARTER TRADING (MUQAYADAH)

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✱ Direct exchange of goods for other goods, without use of money
- ✱ 2 concurrent conditions for barter trade that involved Ribawi items:
 - ➡ Time Factor: the exchange must be on the spot
 - ➡ Quantity Factor: must be equal regardless of quality
- ✱ Barter trade not encouraged in Islam because of:
 - ➡ The least efficient and least practical method of exchanging goods and merchandise
 - ➡ (hard to match the needs and consume a lot of time)
 - ➡ Justice and fairness are difficult to achieve in this transaction
 - ➡ (difficulties to evaluate the real and fair value and possibility of injustice)





CASH TRADING (BAY' MUTLAQ)

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✱ Exchange of goods or property for cash
- ✱ Sale of goods for the equivalent price in money
- ✱ The use of cash money preferred as it comes almost close to the requirement when barter of the same commodity is involved
 - ➡ to avoid any occurrence of riba
- ✱ Money provides a standard for real and just exchange of value of various commodities and curb the chances of injustice





CURRENCY TRADING (BAY' AL-SARF)

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✱ The exchange of one currency with a similar or another currency
- ✱ Include sale of gold or silver for an article of the same kind
- ✱ 2 rules to avoid riba:
 - ➡ Time factor
 - ➡ Quantity factor
- ✱ 2 condition of bay' al-sarf:
 - ➡ If the exchange is between the same type of currency it must fulfil these conditions
 - ➡ equal quantity or weight regardless of quality and must be on the spot
 - ➡ If the exchange is between 2 different type of currencies
 - ➡ quantity or weight can differ but the exchange must be on the spot





BARTER TRADE & BAY' AL-SARF

- ◆ The differences between barter trade & bay' al-sarf:

BARTER TRADE

The exchange of a commodity or goods with another goods or commodity rather than exchanging it for money

BAY' AL-SARF

The exchange of one currency to another currency or the trading of local currency too a foreign currency

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS





AQAD (CONTRACT)

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✦ Literally:
 - ➞ Tying tightly, as in tying a rope. It also means to make covenant and to give an oath.
- ✦ Thus, the word aqd carries the meanings of covenant and fulfillment.
- ✦ Technically:
 - ➞ An engagement and agreement between two persons in a legally accepted, impactful and binding manner





CLASSIFICATIONS OF CONTRACTS

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

1. Contract Of Exchange/ Transfer Of Property (Aqad Al-Muawadat)
2. Contract Of Security (Aqad Al-Tawthiqat)
3. Contract Of Partnership (Al-Shirkah)
4. Contract Of Safe Custody/ Investment (Al-Wadiah)
5. Contracts Pertaining To Utilization Of Usufruct (Uqud Al-Manfaah)
6. Contracts Pertaining To Work/ Services





CONTRACT OF EXCHANGE/ TRANSFER OF PROPERTY

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✦ Contract of exchange/ transfer of property (Aqad al-Muawadat)
 - ➡ Transfer the ownership of goods and merchandise
 - ➡ Exchange of a commodity for another commodity or money, or money for money
 - ➡ Eg: BBA, Bay' Salam, Bay' al-Istisna'





CONTRACT OF SECURITY

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✦ Contract of security (Aqad al-Tawthiqat)
- ✦ Provision of securities to protect the interest of the parties to the contract
- ✦ These contracts are meant to secure debts for their owners and
- ✦ guarantee creditors of debts owing to them. These are guaranty, assignment of debt and mortgage.
- ✦ Eg: Kafalah, Rahn, Hiwalah





CONTRACT OF PARTNERSHIP

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✦ Contract of partnership (al-shirkah)
- ✦ 2 or more parties jointly venture into project by sharing in the capital contribution, management of the capital, profit & liabilities
- ✦ Eg: Musyarakah (PLS) and Mudharabah (profit sharing)





CONTRACT OF SAFE CUSTODY/ INVESTMENT

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✦ Contract of safe custody/ investment (al-Wadiah)
- ✦ Involved owner of the property deposited his property in custody of another for safekeeping or investment
- ✦ Not intended to transfer any property or utilize the usufruct or to do a work
- ✦ Eg: Wadiah





CONTRACTS PERTAINING TO UTILIZATION OF USUFRUCT

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✦ Contracts pertaining to utilization of usufruct (Uqud al-Manfaah)
- ✦ Transfer the right to use the usufruct of a property from the owner to the user for or without a consideration
- ✦ Eg: Ijarah, 'Ariyah, Isti'jar, Qard





CONTRACTS PERTAINING TO WORK/ SERVICES

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✦ Contracts pertaining to work/ services
- ✦ Transaction in which one of the contracting parties is requested to do a work whether with a consideration or not
- ✦ Eg: Wakalah, Ju'alah, Istisna'





GRATUITIOS CONTRACTS

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS

- ✦ Gratuitios contracts (Uqud al-Tabbaru'at)
- ✦ Unilateral in nature and favour the recipient
- ✦ Eg: Hibah, Wasiyyah, Waqf, Ibra'





END OF CHAPTER

MUAMALAH

EVIDENCES

TRANSACTIONS

CONTRACTS



FIQH MUAMALAT

فقه معاملات



HIBAH

هبة



اَوْنَبُوْرَسِيَّتِي تَيَكْنُوْلُوْجِي مَبَارَا
UNIVERSITI
TEKNOLOGI
MARA





CONTENT

DEFINITION

EVIDENCES

PILLARS

CONDITION

ISSUES

APPLICATION

- ❖ DEFINITION
- ❖ EVIDENCES
- ❖ PILLARS OF HIBAH
- ❖ CONDITIONS OF HIBAH
- ❖ SALIENT ISSUES OF HIBAH
- ❖ MODERN APPLICATION



DEFINITION

DEFINITION

EVIDENCES

PILLARS

CONDITION

ISSUES

APPLICATION

- ✳ Literally:
 - ➡ passing or blowing
- ✳ Technically:
 - ➡ A voluntary contract that results in uncompensated ownership transfer between living individuals
- ✳ Hibah is a transfer of legal and beneficial ownership of the assets from the donor to the beneficiary on volunteer basis. i.e. without valuable consideration and compensation
- ✳ Under Hibah, the proportion of distribution to heirs and non-heirs can be determined by the donor.



EVIDENCES

DEFINITION

EVIDENCES

PILLARS

CONDITION

ISSUES

APPLICATION

✱ Al-Qur'an:

وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ
عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيًّا

Give women their dower in good cheer. Then, if they forego some of it, of their own will, you may have it as pleasant and joyful. (4)

وَأَتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَىٰ وَالْيَتَامَىٰ
وَالْمَسْكِينِ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ

and gives wealth, despite (his) love for it, to relatives, and to orphans, the helpless, the wayfarer, and to those who ask, and (spends) in (freeing) slaves



EVIDENCES

DEFINITION

EVIDENCES

PILLARS

CONDITION

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APPLICATION

✿ Hadith:

- ➞ Reported from Anas: Meat was brought to the Messenger of Allah (s.a.w) and it was said that it was given to Barirah as a charity. Rasulullah (s.a.w) said: "For her it is a charity, and for us it is a gift."
- ➞ Narrated by Aisha the Prophet(s.a.w) used to accept gifts an
- ➞ "Exchange gifts so that you may love one another"



PILLARS OF HIBAH

DEFINITION

★ Wahib

➡ Person who give the hibah/ donor

EVIDENCES

★ Mauhub Lah

➡ Person who receive the hibah/ donee

PILLARS

★ Mauhub

➡ Subject matter / gift

CONDITION

★ Sighah

➡ Ijab/ Offer

ISSUES

➡ Qabul/ Acceptance

APPLICATION



CONDITIONS OF HIBAH

DEFINITION

EVIDENCES

PILLARS

CONDITION

ISSUES

APPLICATION

✳ Conditions for the Donor

- ➡ Eligible to give his property voluntarily to another
- ➡ Must be legal owner of the object
- ➡ Mukallaf (legal age)
- ➡ Rusyd (mature)

✳ Conditions for the Donee

- ➡ Any man with or without legal capacity
- ➡ If the donee has legal capacity, he/she can receive (qabd) gift by him/herself. If he/she is not eligible recipient, the receipt (qabd) has to be done by his legal guardian.



CONDITIONS OF HIBAH

DEFINITION

EVIDENCES

PILLARS

CONDITION

ISSUES

APPLICATION

✦ Conditions of the Object

- ➞ Every object which is legally tradable from shariah perspective is considered legal to be given as gift.
- ➞ The object must be in existence in the time of contract
- ➞ Must be valuable property
- ➞ Donor must be the owner



REVOCATION OF HIBAH

DEFINITION

EVIDENCES

PILLARS

CONDITION

ISSUES

APPLICATION

Hanafi:

- Permit the donor to recall/revoke the hibah (gift) as long as no legal restriction forbidding the revocation
- But this act is considered as makruh – the donee has right to refuse to return the gift

Maliki, Shafie and Hanbali:

- Not permissible for the donor to revoke the gift after qabd is made.
- Ownership of the gift is established by ijab and qabul and become binding through qabd.
- Except for father and mother giving a gift to his son.



HIBAH WITH COMPENSATION

DEFINITION

EVIDENCES

PILLARS

CONDITION

ISSUES

APPLICATION

- ✳ Majority of jurist held that unconditional hibah contract does not require recipient to compensate the donor
- ✳ Maliki ruled that gift's recipient should compensate the gift if there is any indication the donor may be expecting compensation
- ✳ Majority of jurist viewed that gift contract with condition requiring recipient to compensate the donor for his gift is valid and the condition is valid
- ✳ Shafie jurist ruled that if the compensation is unknown, the hibah and condition is invalid.



MODERN APPLICATION

DEFINITION

EVIDENCES

PILLARS

CONDITION

ISSUES

APPLICATION

- ✿ Hibah in Saving/ Current Account
- ✿ Hibah in Loan (Qardh) Contract
- ✿ Hibah in Al-Ijarah Thumma Al-Bai Contract.
- ✿ Hibah in Inter-bank Mudharabah Investment Contract
- ✿ Hibah in Takaful



END OF CHAPTER

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APPLICATION



FIQH MUAMALAT

فقه معاملات



WAQF

وقف



اَوْنُوْرُسِيْتِي تِيْكْنُوْلُوْجِي مَارَا

UNIVERSITI
TEKNOLOGI
MARA





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- ✦ DEFINITION
- ✦ EVIDENCES
- ✦ PILLARS OF WAQF
- ✦ CONDITIONS OF WAQF
- ✦ TYPES OF WAQF
- ✦ CHARACTERISTICS OF WAQF



DEFINITION

DEFINITION

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CHARACTER

✦ Literally:

➞ To stop, to hold, to restrain , to detain, to prevent or preventing from disposition

✦ Technically:

➞ Irrevocable dedication of a portion of ones wealth for the purpose of expending its usufructs to legitimate causes or charitable and righteous ends with the overriding objective of getting closer to Allah.



CONCEPT OF WAQF

DEFINITION

- ✳ Waqaf institution was most central in financing socio-religious and public welfare systems during the early days of Islam.

EVIDENCES

- ✳ Waqf (Islamic endowment) played considerable part in socio-educational, cultural and life-saving aspects of the Muslims.

PILLARS

- ✳ Majority of the jurists regard waqf a recommended benevolent act (tabarru` mundub) as its based on the reason on contributing to righteous philanthropic causes (jihāt al-birr/ wujuh al-khayr) which is recommended by textual sources, namely the Qur`an and Sunnah.

CONDITIONS

TYPES

- ✳ The Hanafi jurist, however disagreed by saying that waqf in terms of legal value is merely a permissible venture (mubah) mainly because it can also be made by non-Muslims.

CHARACTER



EVIDENCE

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★ Al-Qur'an

مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلٍ
فِي كُلِّ سُنْبُلَةٍ مِائَةٌ حَبَّةٌ وَاللَّهُ يُضَعِفُ لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ

The likeness of those who spend their wealth in Allah's way is as the likeness of a grain which groweth seven ears, in every ear a hundred grains. Allah giveth increase manifold to whom He will. Allah is All-Embracing, All-Knowing. (261)

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

Ye will not attain unto piety until ye spend of that which ye love. And whatsoever ye spend, Allah is Aware thereof. (92)



EVIDENCE

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✿ Hadith:

- ➞ Reported by Muslim from Abu Hurairah r.a that Prophet (P.B.U.H) said; “when a son of Adam dies, so does their deeds except for three things: alms giving, or benefited knowledge, or pious son who pray for them”
- ➞ Companion of the Prophet in the name of Mukhairiq made his will that his seven orchards in Madinah be given after his death to Muhammad. When he died, the Prophet took hold of the orchards and made them a charitable waqf for the benefit of the poor and needy.



PILLARS OF WAQF

DEFINITION

- ✱ al-Waqif
 - ➞ Waqf giver

EVIDENCES

- ✱ al-Mawquf
 - ➞ Waqf property

PILLARS

- ✱ al-Mawquf 'alaih
 - ➞ Waqf recipient

CONDITIONS

- ✱ Sighah
 - ➞ Offer
 - ➞ Acceptance of Waqf

TYPES

CHARACTER



CONDITIONS OF WAQF

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

CHARACTER

✦ Conditions of Property

- ➞ Wealth to be declared must be physically tangible items such as a house or plot of land.
- ➞ Wealth to be declared must be physically tangible items such as a house or plot of land.
- ➞ Donor must legally own the declared wealth or property and it must be able to benefits the community and transferable.
- ➞ Property must have permanent usability.
- ➞ Use of the property must be governed by Islamic law.



CONDITIONS OF WAQF

DEFINITION

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CHARACTER

✳ Conditions For Contracting Parties

- ➡ The waqif should be legally fit and capable to give waqf. A child, an insane or a person who does not own the property cannot make waqf.
- ➡ The beneficiaries (al-mawquf 'alaih) must be alive. Waqf for the deceased is not permissible.



CONDITIONS OF WAQF

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✳ Conditions for Sighah

- ➡ 'Aqad is understandable words or writings for any purpose of waqf whether general waqf or specific waqf. It is compulsory to validate the waqf.
- ➡ 'Aqad statement is of two types:
 - ➡ Explicit statement (lafz sarih): A clear statement that entails one exact meaning only like "I give my house to be waqf for the poor people".
 - ➡ Implicit statement (lafz kinayah): A statement that have more than one meanings like "My property is a charity (sadaqah) to the poor people".



CONDITIONS OF WAQF

DEFINITION

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✱ General Conditions:

- ➡ The purpose of waqf must be legitimate
- ➡ It must be an act of charity from the points of view of Shariah. Hence waqf for the wealthy alone is not permissible because it is not a form of charity.



TYPE OF WAQF

DEFINITION

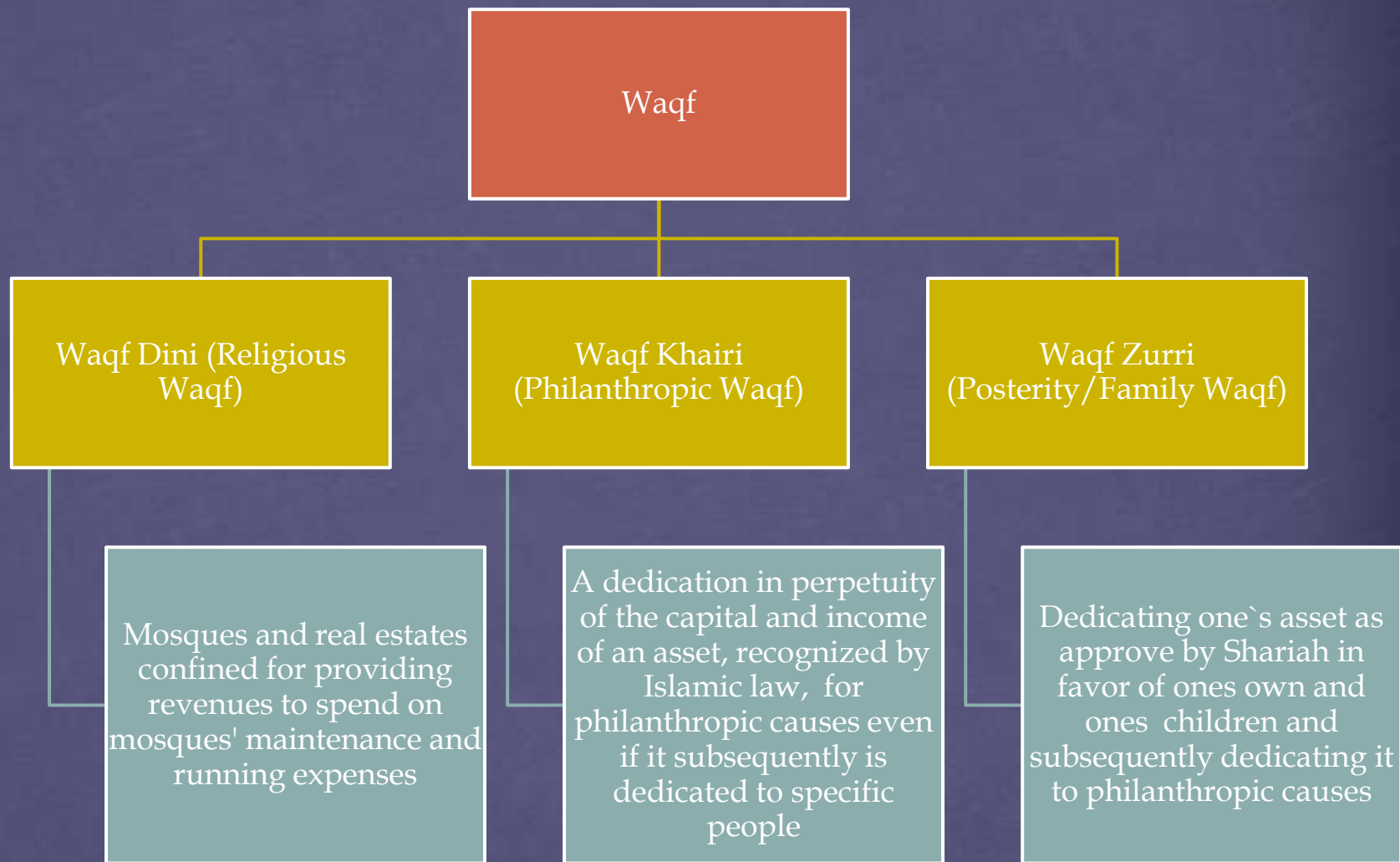
EVIDENCES

PILLARS

CONDITIONS

TYPES

CHARACTER





CHARACTERISTICS OF WAQF

DEFINITION

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Perpetuity of its dedication

- The implication is that once a property, often a real estate, is dedicated as waqf it remains waqf forever.
- Such a waqf property requires lengthy process to be exchanged against another property of equivalent value with the approval of the local authority. It follows that such an exchanged asset must immediately become waqf for the same purpose and beneficiaries of the former one.

The inviolability of the founder's stipulation

- Accordingly, as a matter of principle the revenues of waqf should exclusively be used for the objective stipulated by its founder thus the managing authority has no any jurisdiction to sway from these objectives so long as they are compatible with Shariah.
- However, this will be waived if such purposes become infeasible, in which case the revenue of this waqf should be spent on closest purpose available and if not it should be spent in favor of the poor and needy



WISDOMS OF WAQF

DEFINITION

- ✦ To express one's submission and piety to Allah SWT.

EVIDENCES

- ✦ To get close to Allah SWT.
- ✦ To get a continuous charity in this and afterlife.
- ✦ Sharing benefits with Muslim community like building mosques and schools
- ✦ To strengthen the unity of ummah.

PILLARS

CONDITIONS

TYPES

CHARACTER



END OF CHAPTER

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FIQH MUAMALAH

ISLAMIC BUSINESS TRANSACTION



CHAPTER THREE

RIBA



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❖ ISLAMIC RULINGS ON RIBA IN TRADE

RATIONALE

❖ THE RATIONALE BEHIND THE PROHIBITION OF RIBA





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- ✦ Riba was gradually prohibited through 4 stages in 4 different verses in the Quran
- ✦ Practice of giving and taking riba has been widely practice in Arab society and regarded as part and parcel of the business society
- ✦ To eliminate something that have been accustomed for so long is not an easy task
- ✦ This approach also adopted in the prohibition of liquor
- ✦ Arab society had been given ample time to gradually adjust themselves





RIBA IN THE QURAN

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**Stages Of
Prohibition
Of Riba In
The Quran**

**Moral
denunciation
of Riba**
(Al-Rum : 39)

**Riba & the
Jews**
(An-Nisa : 61)

**Legal
Prohibition of
Riba**
(Ali-Imran:
130-132)

**Al-Bay' as the
alternative to
Riba**
(Al-Baqarah:
275-281)





PROHIBITION OF RIBA

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STAGES	VERSES
1 st	وَمَا أَتَيْتُم مِّن رَّبًّا لِتَرْبُتُوا فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُوا عِندَ اللَّهِ وَمَا أَتَيْتُم مِّن زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَٰئِكَ هُمُ الْمُضْعِفُونَ ﴿٣٩﴾ 39. And whatever you give for interest to increase within the wealth of people will not increase with Allah. But what you give in <u>zakah</u>, desiring the countenance of Allah - those are the multipliers.
2 nd	فَبِظُلْمٍ مِّنَ الَّذِينَ هَادُوا حَرَّمْنَا عَلَيْهِمْ طَيِّبَاتٍ أُحِلَّتْ لَهُمْ وَبِصَدَهِمْ عَن سَبِيلِ اللَّهِ كَثِيرًا ﴿٤٠﴾ وَأَخَذِهِمُ الرِّبَا وَقَدْ هُمُوا عَنْهُ وَأَكْلِهِمْ أَمْوَالِ النَّاسِ بِالْبَاطِلِ وَأَعْتَدْنَا لِلْكَافِرِينَ مِنْهُمْ عَذَابًا أَلِيمًا ﴿٤١﴾ 160. For wrongdoing on the part of the Jews, We made unlawful for them [certain] good foods which had been lawful to them, and for their averting from the way of Allah many [people], 161. And [for] their taking of usury while they had been forbidden from it, and their consuming of the people's wealth unjustly. And we have prepared for the disbelievers among them a painful punishment.



PROHIBITION OF RIBA

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STAGES	VERSES
3 rd	يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُضَاعَفَةً ۖ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ ﴿١٣٠﴾ 130. O <u>you</u> who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful.
4 th	الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۚ ذَٰلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا ۚ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۚ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِّن رَّبِّهِ فَانْتَهَىٰ فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ ۚ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۖ هُمْ فِيهَا خَالِدُونَ ﴿٢٧٥﴾ 275. Those who consume interest cannot stand [on the Day of Resurrection] except as one stands <u>who</u> is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein.





DEFINITION

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RATIONALE

- ★ Literally:
 - Riba is an Arabic word, derived from the verb *raba* that literally means 'to grow' or 'expand' or 'increase' or 'inflate' or 'excess'
 - Excess quantity, addition, an increase of a thing over and above its original size or amount
- ★ It is generally translated into English as “usury” or “interest”, but in fact it has a much broader sense in the Shari`ah.
- ★ Riba in the Shari`ah, technically refers to the ‘premium’ that must be paid by the borrower to the lender along with the principal amount as a condition for the loan or for an extension in its maturity.
- ★ In fiqh terminology, riba means an increase in one of two homogeneous equivalents being exchanged without this increase being accompanied by a return.
- ★ Technically (2 definition depending on the nature of transaction):
 - Trade Transaction
 - Loan Transaction





DEFINITION

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RATIONALE

- ✱ Definition 1:
- ✱ Trade transaction:
 - ➔ Unlawful gain derived from the quantitative inequality of the counter-values in any transaction purporting to effect the exchange of 2 or more species which belong to the same genus(category) and are governed by the same efficient cause(illah)
- ✱ Definition 2:
- ✱ Loan transaction:
 - ➔ A predetermined excess or surplus over and above the loan received by the creditor conditionally in relation to a specified period



CATEGORIES OF RIBA

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- ✱ Debt Riba
 - ➞ Riba Qardh
 - ➞ Riba Jahiliyyah
- ✱ Trade Riba
 - ➞ Riba al-Fadl
 - ➞ Riba al-Nasiah





DEBT RIBA

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RATIONALE

✦ Riba Qardh

- ➞ Any predetermined benefit for the owner of debt stated in the contract, which the debtor need to fulfil
 - ➞ E.g.: interest stated in loan contract

✦ Riba Jahiliyyah

- ➞ The surplus or excess payment above the original debt as a penalty to the debtor due to his inability to service the loan repayment within the stipulated time
- ➞ Real and primary form of riba
- ➞ Premium paid to the lender in return for his waiting
- ➞ Giving or taking of every excess amount in exchange of a loan at an agreed rate irrespective of whether it is low or high
 - ➞ E.g.: interest in credit card transactions due to the delay in the repayment





TRADE RIBA

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- ✱ Riba al-Fadl
 - ➞ Any additional quantity or inequality in the exchange of goods from the similar type of the ribawi items
 - ➞ (Quantity Factor)
- ✱ Riba al-Nasiah
 - ➞ Any delay in the exchange of the ribawi items from the same type and category
 - ➞ (Time Factor)





EVIDENCE

◆ Al-Quran

➡ Al-Baqarah: 275

INTRODUCTION

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RATIONALE

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ
ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ
مِّن رَّبِّهِ فَآنتَهَىٰ فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا
خَالِدُونَ

275. Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein.



EVIDENCE

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✦ Al-Hadith:

- ➞ From Jabir: The Prophet saw cursed the receiver and the payer of usury, the one who records it and the two witnesses to the transaction and said: “They are all alike (in guilt and sin).”
- ➞ From Abi Said al-Khudri: The Prophet saw said: gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like, and hand to hand. Whoever pays more or takes more has indulged in riba. Take taker and the giver are alike (in guilt).





RIBAWI ITEMS

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RATIONALE

❖ Commodity Money/ Currency:

- ➞ Gold
- ➞ Silver
- ➞ Currency

❖ Foodstuff:

- ➞ Wheat
- ➞ Barley
- ➞ Dates
- ➞ Salt





RIBAWI ITEM

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RATIONALE

Food				Commodity Money			Allah
Salt	Dates	Barley	Wheat	Silver	Gold	Type	(Ratio decidendi)
*	*	*	*	1	2	Gold	Commodity Money
*	*	*	*	2	1	Silver	
1	1	1	2	*	*	Wheat	Food
1	1	2	1	*	*	Barley	
1	2	1	1	*	*	Dates	
2	1	1	1	*	*	Salt	

- ★ (1) Prompt delivery (time)
- ★ (2) Prompt delivery with the equivalent quantity





ISLAMIC RULINGS ON RIBA IN TRADE

INTRODUCTION

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EVIDENCES

RATIONALE

	Category	Type	Exchange	Quantity		Items
1	Same category	Same type	Spot exchange	Equal in quantity	Regardless of quality	Gold with Gold, Wheat with Wheat
2	Same category	Different type	Spot exchange	Inequality is permitted	Equality is not a condition	Gold with Silver Wheat with Rice Salt with Dates
3	Different category	Different type	Delayed is permitted	Inequality is permitted	Time and Quantity Factor is not a condition	Gold with Wheat RM with Dates





ISLAMIC RULINGS ON RIBA IN TRADE

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RATIONALE

	Category	Type	Exchange	Quantity		Items
4	Ribawi Items and Non-Ribawi Items		Delayed is permitted	Inequality is permitted	Time and Quantity Factor is not a condition	RM with vehicles UD with furniture
5	Between 2 Non-Ribawi Items		Delayed is permitted	Inequality is permitted	Time and Quantity Factor is not a condition	Bricks with Sands Cloth with Patrols'





THE RATIONAL BEHIND THE PROHIBITION OF RIBA

INTRODUCTION

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RATIONALE

- ✱ Barter system is not so favourable from the Shariah point of view.
- ✱ The impact of riba is on the society at large compared to other crimes prescribed in hudud which impact are restricted to only a few of people.
- ✱ It is a clear burden on the borrower. In any circumstances, he is obliged to repay the principal and interest charge (Money renting). Money and time cannot grow by themselves.
- ✱ Riba is the main pushing factor for the people with surplus of money to lend their money out to the deficit units in the economy. However, it could render to exploitation of deficit units by the surplus units.
- ✱ To prevent any form of injustice, exploitation and manipulation among the parties.
- ✱ The inflexibility of interest charge results in loss and unemployment in comparison with the profit-and-loss sharing system.
- ✱ Security oriented vs Growth oriented. Interest-based system is not for the poor parties with poor creditworthiness.





THE RATIONAL BEHIND THE PROHIBITION OF RIBA

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RATIONALE

- ✱ Inequality in loan distribution makes the rich becomes richer and the poor becomes poorer.
- ✱ Interest-based system impends the innovations amongst the small-scale enterprises particularly.
- ✱ Wealth creation and transfer: Riba activities do not create a new stock of wealth.
- ✱ Borrowers are not exposed to any risk (except credit risk - does not commensurate the profit made).
- ✱ Money is considered as commodity is an interest-based system and subject to the law of demand and supply (Allowing speculation on money).
- ✱ Interest is a component of costs in an interest-based system.
- ✱ Case Studies:
 - Bank interest
 - Riba al-fadl
 - Similarities between trade and riba





CASE 1

INTRODUCTION

DEFINITION

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EVIDENCES

RATIONALE

- ★ **Charging Interest In The Banking Sector**
- ★ Prohibition of riba would safeguard the interest of both financial institution and customer
- ★ In case of money deposits in savings accounts or fixed deposits, the interest is unfair because of:
 - ➔ Banks:
 - ➔ Conventional Bank: Obligated to pay interest to the depositor which is more than the principal amount deposited
 - ➔ Islamic Banks: Profit would be given to the depositor only if bank make profit. If they are making losses, they are not compelled to pay any amount of profit
 - ➔ Customers:
 - ➔ Conventional Bank: Customers would be deprived from the high profit gained by bank even though they are guaranteed some form of fixed income (interest), it is rather small compared to the huge profit gained by the banks.
 - ➔ Islamic Bank: If bank making huge profits for a certain period, depositor would be given a fair share of profit based on agreed proportion





CASE 2

INTRODUCTION

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- ✱ **Prohibition of Riba al-Fadl**
- ✱ To ban any form of unfair trade practices from the business society – unfair practice in barter transaction
- ✱ The Prophet saw was actually trying to discourage barter trading and gradually eliminate barter system while suggesting a better and just monetary system using currency
- ✱ The answer to the question:
 - ➞ Why any trader would like to trade 2 similar commodity of different quality without having gain from the differences in quantity?
- ✱ No sensible trader would like to trade at loss, they would avoid any involvement of barter trading that might lead to either the practice of riba or trade at loss.
- ✱ Islam suggested fairer alternative – utilize currency as a medium of exchange that could facilitate a proper flow of trade and accurate market value. This would avoid injustice due to inability to determine fair value for the exchange in barter trade.





CASE 3

INTRODUCTION

- ✦ **Why Riba is Mentioned Together With Trade In The Quran**
- ✦ **Difficulties in distinguishing between these 2 concepts.**

DEFINITION

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CASE 3

INTRODUCTION

- ★ Why Riba is Mentioned Together With Trade In The Quran
- ★ Difficulties in distinguishing between these 2 concepts.

DEFINITION

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RATIONALE

Similarity	
Both seems to gain something extra from the original principal – through interest and profit	
Trade	Riba
In trading, buyer will gain and retain something in possession in return for profit achieved by the seller.	In riba based transaction, debtor will not retain anything from the creditor even though he gets to utilize money in the first place. He is required to pay back more than principle. No value added in riba based transaction.
In trade, traders always exposed to the concept of profit and loss.	In riba based transaction, the creditor always gain at the expense of the debtor at all cost. It is confirmed gain on the part of creditor
Trading is win-win situation.	Interest always win-lose situation or lose-lose situation





END OF CHAPTER

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FIQH MUAMALAH

ISLAMIC BUSINESS TRANSACTION



CHAPTER FOUR

AL-QARDH



CONTENT

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❖ DEFINITION

❖ EVIDENCE

❖ PILLARS OF AL-QARDH

❖ CONDITIONS OF AL-QARDH

❖ QARDH AL-HASSAN

❖ PROCEDURES OF DEBT DISBURSEMENT

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QARDH
AL-HASSAN

DEBT
DISBURSEMENT





DEFINITION

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

QARDH AL-HASSAN

DEBT DISBURSEMENT

- ◆ Qardh: Loan/ Debt
- ◆ Literally:
 - ➔ To cut something off; money given to the borrower is called Qardh since portion that has been cut off from the property of the lender
 - ➔ Also known as al-Salaf or al-Dayn
- ◆ Technically:
 - ➔ Specific contract on transferring a specified property to another party on condition that a similar property will be given back in return



AL-QARDH

DEFINITION

- ✦ The property can be any type of assets ranging from cash money, livestock or business

EVIDENCES

- ✦ It is called qardh, as through this contract a certain part of the lender's property is cut off and given to the borrower.

PILLARS

- ✦ Qardh refers to a contract through which a lender gives a certain homogenous property to a borrower on the condition that the latter is responsible to return a similar property immediately upon a demand or at a specified time.

CONDITIONS

QARDH AL-HASSAN

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★ Quran

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

282. O you who have believed, when you contract a debt for a specified term, write it down.

★ Hadith

- ➔ Narrated by Anas ibn Malik: The prophet saw said:
- ➔ I saw on the night of Isra' something written on the gate of the paradise. Donation(sadaqah) is rewarded 10 folds, and qardh is rewarded 18 folds.
- ➔ I asked Gibrail: Why is it giving Qardh is better than donation? He replied: Because the receiver of the donation asked for it while he actually has something, but the borrower will not ask for loan except when there is a necessity



EVIDENCE

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DEBT DISBURSEMENT

- ✱ Ijma:
 - ➡ The scholar had formed an ijma' that Qardh is permissible in Islam
- ✱ This contract is classified under the category of contracts pertaining to the utilization of usufruct (aqad al-manfa'ah)
- ✱ There is no actual transfer or exchange of property involved.





PILLARS OF QARDH

DEFINITION

- ★ Muqridh
 - ➔ Creditor or Lender

EVIDENCES

- ★ Muqtaridh
 - ➔ Debtor or Borrower

PILLARS

- ★ Maal
 - ➔ Property

CONDITIONS

- ★ Sighah
 - ➔ Ijab: Offer
 - ➔ Qabul: Acceptance

QARDH
AL-HASSAN

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FLOW OF AL-QARDH

DEFINITION

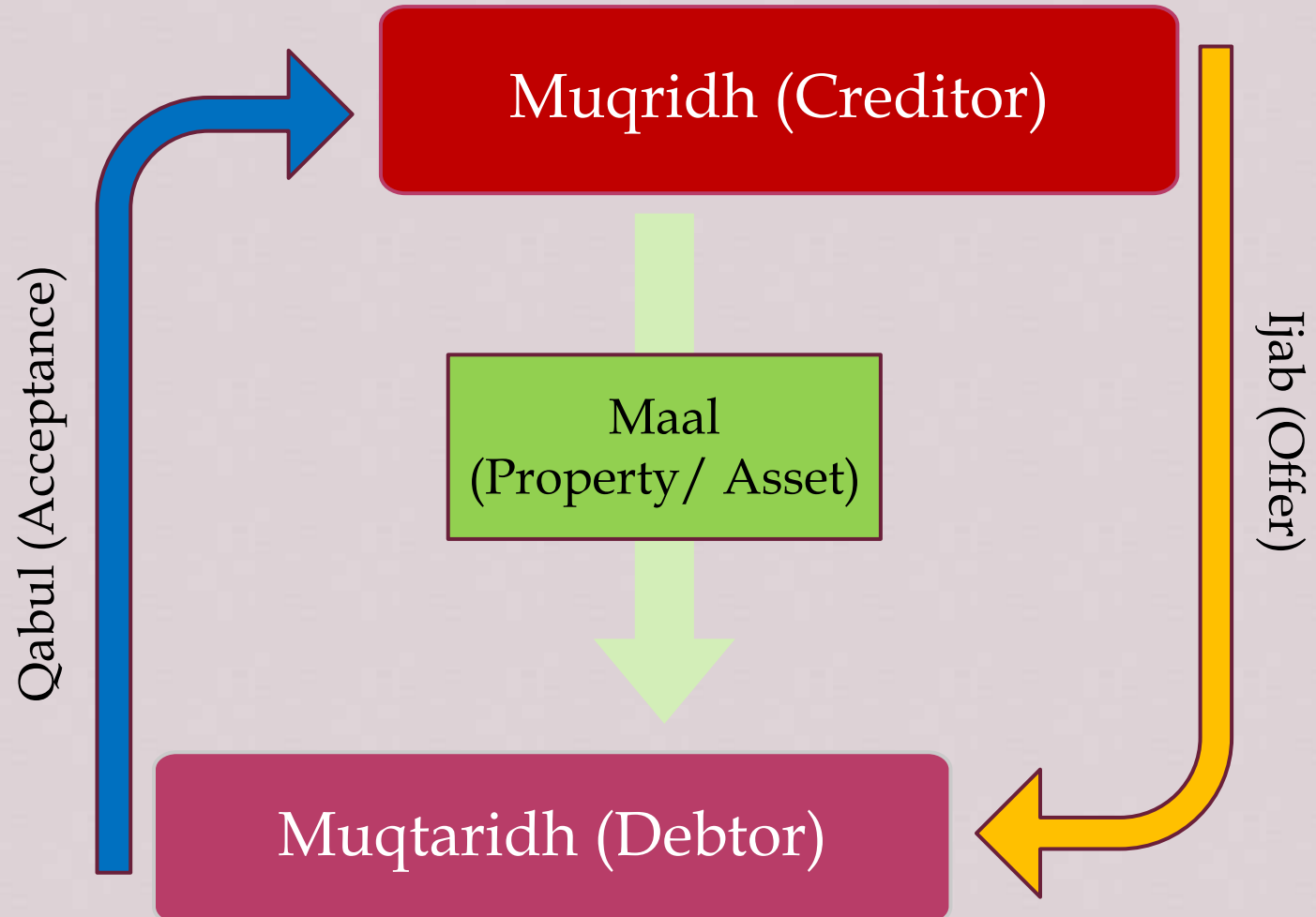
EVIDENCES

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CONDITIONS OF QARDH

DEFINITION

- ✱ Ijab (Offer) and Qabul (Acceptance)
 - ➞ Must be in a very clear and concise type of sighah (offer & acceptance)

EVIDENCES

- ✱ Ahliah
 - ➞ Eligibility of the contracting parties (sane, adults & qualified)

PILLARS

- ✱ Quantity and Quality
 - ➞ Must be specified in quantity, weight & quality
 - ➞ Items that are not mixed with other material

CONDITIONS

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QARDH AL-HASAN

DEFINITION

• Literally

- ➔ Qardh means cutting off.
- ➔ Hasan means benevolence, beautiful, and kindness.

EVIDENCES

• The term al-qard al-hasan literally means beneficial loan, benevolent loan, gratuitous loan, and beautiful loan.

• A debt that is free from any type of predetermined condition or promise to repay back more than the original amount stated in the contract, but a special token is sincerely given by the debtor to the lender during debt settlement not because any written agreement or any predetermined provision or term

PILLARS

CONDITIONS

QARDH AL-HASSAN

DEBT DISBURSEMENT





QARDH AL-HASAN

DEFINITION

- Under Qardh al-Hassan, borrowers or debtor can voluntarily give some extra amount more than the loan principle provided that:

EVIDENCES

- ➔ Not stated in the contract
- ➔ Not have agreed upon
- ➔ Not predetermined in any manner by both parties

PILLARS

CONDITIONS

QARDH AL-HASSAN

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QARDH AL-HASSAN

DEBT DISBURSEMENT

★ Quran:

إِنْ تُقْرِضُوا اللَّهَ قَرْضًا حَسَنًا يَضْعِفَهُ لَكُمْ وَيَغْفِرَ لَكُمْ وَاللَّهُ شَكُورٌ حَلِيمٌ ﴿١٧﴾

17. if ye loan to Allah, a beautiful loan, He will double it to your (credit), and He will grant you forgiveness: for Allah is Most ready to appreciate (service), Most Forbearing,-

- ★ The Quran verses explains Qardh al-Hassan between Allah and the believers whereby it is actually an offer from Allah for them to lend their energy, time and property in Qardh al-Hassan manner
- ★ They will receive back all the things that they had sacrificed for the sake of Allah plus all extra rewards that will be given to them





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◆ Hadith:

- ➞ Abu Rafi said: The prophet (s.a.w) borrowed a young camel and then the camels from the zakat came to him. He ordered me to repay the man his young camel.
- ➞ I said, I can only find a good camel in its seventh year among the camels
- ➞ The prophet said, “Give it to him. The best of people are those who discharge their debts in the best manner”





PROCEDURE OF DEBT DISBURSEMENT IN ISLAM

DEFINITION

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QARDH AL-HASSAN

DEBT DISBURSEMENT

1. The debt transactions must be documented in a written contract and binding agreement.
 - ➔ Jumhur Fuqaha
 - ➔ The command to “put it down in writing” is recommended command indicating the best suggested practice; not compulsory
 - ➔ Supported by Abdullah Yusuf Ali that it is not obligatory in law.
 - ➔ Contemporary scholars (Mohd Tahir Asyur & Sayid Qutb)
 - ➔ Original ruling for the command is mandatory practice, that all debt must be documented and not optional.
 - ➔ Reason: Obviously understood especially if we studied report on cases of false claims, forgery, and fraud in the society which intensifies in an almost alarming rate every year.





PROCEDURE OF DEBT DISBURSEMENT IN ISLAM

DEFINITION

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QARDH AL-HASSAN

DEBT DISBURSEMENT

وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَيْنْ مَقْبُوضَةً فَإِنْ أَتَى بَعْضُكُمْ بَعْضًا فَلْيُؤَدِّ الَّذِي
أُؤْتِمِنَ أَمْنَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ وَاللَّهُ بِمَا
تَعْمَلُونَ عَلِيمٌ

283. And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken. And if one of you entrusts another, then let him who is entrusted discharge his trust [faithfully] and let him fear Allah, his Lord. And do not conceal testimony, for whoever conceals it - his heart is indeed sinful, and Allah is Knowing of what you do.

- ➔ Verses 283 indicate the “rukhsah” which exempts parties involved from this following ruling provided they can really trust each other.
- ➔ By making writing debts compulsory, people will not have tendency of taking things for granted from the beginning.
- ➔ The ruling will be beneficial for creditors to legitimise their claims to the debtors





PROCEDURE OF DEBT DISBURSEMENT IN ISLAM

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- ➔ The objectives (maqasid) of this rulings;
 - ➔ Secure the right of all parties involved and legitimize their claim from one another
 - ➔ Avoid any future dispute or argument
 - ➔ Organize and standardize the procedure of muamalat in the business society
 - ➔ Enable to distinguish between legal and illegal contracts





PROCEDURE OF DEBT DISBURSEMENT IN ISLAM

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2. The parties involved must not be reluctant or wary in documenting every single loan transaction regardless of its size or duration. The emphasis given on documentation of debt has been justified as in above verses:

➔ Aqsat

➔ It is preferable, equitable and fairer for all parties in sight of Allah

➔ Aqwam

➔ A documented testimony or evidence is more reliable and consistent than oral testimony which based solely on memory

➔ It can prevent any suspicion or doubt on the contract itself, or any claim made by any parties





PROCEDURE OF DEBT DISBURSEMENT IN ISLAM

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3. The parties involved must provide witnesses to certify the debt contract with the following conditions:
 - ➔ The witnesses must be either 2 males or 1 male and two females
 - ➔ The witnesses must be reliable and approved or accepted by both parties. Reliability is based on the track record of the witnesses.
 - ➔ The witnesses must not refuse to testify when they are called upon by disputed parties or by the relevant authorities





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FIQH MUAMALAT فقه معاملات



BAY' AL-DAYN

بيع الدين



اَوْنُوْرْسِيْتِي تِيْكْنُوْلُوْجِي مَارَا
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◆ Literal:

➞ Debt, pecuniary obligation, liability or obligation

◆ Technical:

➞ An exchange between A payable right upon the person and A property on the basis of ownership of the price and the right

◆ Sale of debt which can be either against a debt or other than a debt , to the debtor or other than a debtor, on a cash basis or a deferred payment basis.

◆ Sale contract in which the creditor sells his payable right upon the debtor either to the debtor himself or to A third party at discount price or at cost price on the spot payment basis





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✱ Hadith:

➞ Ibn Umar reported that: One day he came to see the Prophet (saw) and told him: I sell camel in Baqi' in dinars (debt) and accept dirhams (payment), and I sell in dirhams (debt) and accept dinars (payment). The Prophet (saw) said: It is okay, but you should try to accept it at the day price for each before you conclude your contract.

➞ Narrated by Muslim





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✱ Ijma'

- ➔ Majority of scholars agree on its permissibility because there is no single nas quoted its prohibition except the prohibition of bay' al-kali' bi al-kali'.
- ➔ They hold different views about sale of debt to the third parties on the ground that the seller will not be able to deliver the sold debt.

✱ Legality of bay' al-dayn depends on its types which are determined by the number of parties involved (whether two or three), the party to whom the debt is sold (whether to the debtor or non debtor) and the modes of delivery (on a spot basis or credit basis)



PILLARS OF BAY' AL-SARF

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- ❖ Seller and buyer
- ❖ Merchandise/ goods
- ❖ Price
- ❖ Sighah





TYPES OF AL-DAYN

DEFINITION

Confirmed Debt (Dayn Mustaqir)

- A debt which is fully confirmed upon the debtor and he has to pay it.
- It cannot be either cancelled or waived without the consent of the creditor
- Eg. Credit, cost of damages, price of a good, cost of completed labor, and dowry of spouse after marital consummation

EVIDENCES

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Non confirmed Debt (Dayn Ghayr Mustaqir)

- A debt in which has not fully confirmed upon the debtor due the fact that the possession of the creditor is subject to its confirmation.
- It can be cancelled at any time before the completion of the basic of the debt.
- Non-confirmed debt is used for selling or buying to a third party.
- Eg. Cost of labor before the completion of the work, dowry of spouse may not complete in case of the divorce before marital consummation.

OPINION OF SCHOLARS

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CONDITIONS OF BAY' AL-DAYN

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- ✱ No delivery risk
- ✱ The debt is confirmed and owned
- ✱ No element of riba and gharar





OPINION OF SCHOLARS

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Sales of Debt to the Debtor (Bay' al-dayn li al-madin)

- According to Hanafis, Malikis, Shafiis and some Hanbalis, the sale is allowed and fully permissible
- The creditor has the full right to sell his debt to the debtor as the debt raised from the cost of damage, qard, price of commodity and cost of services
- Regardless of the types of the debt (confirmation or time stipulation) and at any time and any price
- Selling the debt to the debtor means the debtor is taking what he is supposed to take in reality
- The debt is a right. Therefore selling or giving it to the debtor is originally allowed
- The delivery of the item to the buyer is not needed in sale of debt, therefore it is permissible



OPINION OF SCHOLARS

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The Sale of Debt to a Third Party

(Bay al-dayn li ghayr al madin)

- According to Hanafis, some Shafiis, Hanbalis and Zahiris – the sale of confirmed or non confirmed debt is not allowed to be sold to the third party based on:
 - A sale of un possessed item (bay' ma la tamlik)
 - A sale of undeliverable item
 - It may create a conflict between the debtor and the buyer of the debt
- Some Shafiis and Hanbalis (Ibn Qayyim) – the sale of confirmed debt to the third party is allowed based on:
 - There is no authentic nas that prohibits such sale
 - The debt is a right in the possession of the creditor. So he has the full right to sell it to the debtor or the third party
 - Based on legal maxim: All transactions are permissible until they are proven non permissible by an authentic source





OPINION OF SCHOLARS

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The Sale of Debt to a Third Party (Bay al-dayn li ghayr al madin)

- According to Majma' Fiqh al Islami
 - Sale of debt to the debtor is permissible
 - Sale of debt to the 3rd party is permissible
 - Provided that there is no element of riba and gharar
- Shariah Advisory Council of Securities Commission of Malaysia
 - Bay' al dayn is permissible
 - Bay' al-kali' bi al-kali' is not permissible
 - Sale of debt to the debtor is permissible
 - Sale of debt to the 3rd party is permissible
 - Provided that there is no element of riba and gharar





APPLICATION

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✱ Bay' al-dayn has been mainly used in Malaysia as one of the underlying Shariah contracts in structuring various Islamic finance facilities including:

- ➞ Islamic money markets instruments
- ➞ Islamic treasury bills
- ➞ Islamic negotiable instruments
- ➞ Islamic accepted bills
- ➞ Islamic bonds





END OF CHAPTER

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FIQH MUAMALAT

فقه معاملات



BAY' AL-SARF

بيع الصرف



اَوْنُوْرُسِيْتِي تِيْكْنُوْلُوْجِي مَارَا
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◆ Literal:

➞ sale and purchase of money for money including gold and silver

◆ Technical:

➞ Sale of money for money such as the sale of gold-for-gold or silver-for-silver.

◆ Maliki scholars considers money exchange only if the sale of gold-for-gold or silver-for-silver but gold for silver does not belong to such transactions.

◆ Bay' al-sarf is a sale of something that is price in its own nature for something which is also a price.

◆ It is regarded, as the sale of price for price and each price is a consideration for the other.





EVIDENCE

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✦ Hadith:

➞ Ubadah ibn Samit narrated that Rasulullah (s.a.w) said that: “Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, should be exchange like for like, equal for equal and hand-to-hand. If the types of exchanged commodities are different, then sell them as you wish, if they are exchanged on the basis of hand-to-hand transaction.”

➞ Narrated by Muslim

✦ Ijma’

➞ All Islamic scholars unanimously agree on the permissibility of bay’ al-sarf as it has been practice by the people since the time of Prophet (s.a.w) until now without any objections.





PILLARS OF BAY' AL-SARF

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- ❖ Seller and buyer
- ❖ Merchandise/ goods
- ❖ Price
- ❖ Sighah





CONDITIONS OF BAY' AL-SARF

DEFINITION

Taking possession before leaving one another

- It is necessary that both the things exchanged shall be taken possession before the separation of the parties.
- This is because departing with debts on both sides is not permitted as it is regarded as sale of debt against debt (bay' al-kali' bi al-kali) which is prohibited.

EVIDENCES

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Equal for equal transaction

OPINION OF SCHOLARS

- There can be no credit or postponement of delivery. The principle concerning money is that it cannot be sold or bought on credit.
- If the currency trading involves the exchange of currencies of the same genus such as silver for silver or gold for gold, they must be transacted in like-for-like even if they differ in quality since consideration is given only to quantity.

APPLICATION



CONDITIONS OF BAY' AL-SARF

DEFINITION

Freedom from khiyar syarat

- An option of condition cannot be stipulated. One of the contracting parties may stipulate certain conditions which if not met would grant a legal right to the stipulating party to rescind the contract.
- However, khiyar 'aib (option of defect) is allowed.

EVIDENCES

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Non deferment

- Delivery of both counter values should not be deferred to a certain point of time in the future.
- If one of the parties stipulated a deferment in the receipt of one of the currencies, the contract is rendered null and void as it has been prescribed that exchanges of goods eligible for riba should be on a hand-to-hand basis.

OPINION OF SCHOLARS

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BAY' AL-SARF CONCEPT OF ON FOREX

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✱ Spot Basis

- ➞ Practice based on urf (customs)
- ➞ An exchange between items which are the same such as currencies with currencies. By using analogy on the hadith, majority of fuqaha' agree that all forms of currency should obey the rules established for gold and silver exchanges
- ➞ A consensus among Islamic jurists on the view that currencies of different countries can be exchanged on a spot basis at a rate different from unity, since currencies of different countries are distinct entities with different values or intrinsic worth, and purchasing power.



BAY' AL-SARF CONCEPT OF ON FOREX

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◆ Forward Basis

- ➞ In general, majority of scholars on the view that currency exchange on a forward basis is not permissible, that is, when the rights and obligations of both parties relate to a future date.
- ➞ However, recently the IFI practice bay al-sarf based on waad (promise) or murabahah commodity
 1. Waad based using unilateral promise
 - ➞ The customer promise to purchase/ sell foreign currency with a bank.
 - ➞ A who is looking for a hedge will provide an undertaking to buy a currency from B in the future. A is bound to fulfill its promise to B however B is not under any obligation to act on the transaction when an offer of purchase is submitted.
 - ➞ Essential elements of the promise include the purchase price of the currency and the delivery date. The promise must not be conditional on any event.



BAY' AL-SARF CONCEPT OF ON FOREX

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2. Murabahah commodity based

- ➔ Customer and bank enter into two separate murabahah transaction to facilitate forward foreign exchange contract.
- ➔ Customer will buy commodity for spot value and sell it to the bank for purchase price plus agreed profit payable on deferred basis.
- ➔ The bank will buy another commodity and sell it to the customer again for the purchase price plus agreed profit on deferred basis to address the other side of the forward deal.
- ➔ Both the customer and the bank typically will sell the commodity back to the market to recover their initial investment.





APPLICATION

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- ✱ Bay' al-sarf is applicable to modern spot forex which is based on the spot rate which the deal settlement is expected to be completed shortly after the contract has been executed.
- ✱ Majority of scholars opine that different currencies of different countries consist of different intrinsic values and purchasing power.
- ✱ There are several IFI offer products construct using bay al-sarf such as:
 - ➡ Gold investment savings account
 - ➡ Shariah compliant forex investment product





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FIQH MUAMALAT فقه معاملات



HIWALAH

حوالة



اَوْنُوْرَسِيْتِي تِيْكُوْلُوْكَى مَبَارَا
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- ❖ APPLICATION OF AL-HIWALAH





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❖ Literally

➞ To move, shifting from one place to another

❖ Technically

➞ To make a transfer of a debt from one debtor to the debtor account of another

➞ To transfer a debt from one person (debtor) to another with the same price, it comes to the consequence than the liability of the debtor is abolished. In other words, the first obligator is freed from any financial obligations.

❖ Hiwalah is a contract which caused the transfer of debt from one party to another.

❖ According to Mughni Muhtaj, the term Hiwalah is refer to the debt transfer from a party/person to another.



NATURE OF AL-HIWALAH

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- ✱ Through the transfer of a claim of a debt, the responsibility for its settlement is shifted from one person to another.
- ✱ Hiwalah is similar to the sale of debt but is not sale, it also resemble kafalah and wakalah.
- ✱ However, it is a unique contract which has its own distinct features and condition.
- ✱ The three important participants in a Hiwalah contract are: the principal debtor, the creditor and the transferee.
- ✱ When a valid Hiwalah is concluded, the debt is no longer demanded from the principal debtor.
- ✱ This is because in Hiwalah, the debt is transferred from the principal debtor to the transferee.
- ✱ Furthermore, Hiwalah establishes a right for the creditor to demand the settlement of debt from the transferee.





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✦ Hadith

- ➞ The Prophet S.A.W: “The deferment (of paying debt) by the richer is an injustice. When there is one of you, get the offer from other to transfer your debt to another person, just accept it”
- ➞ Narrated by Ahmad, Prophet Muhammad S.A.W: “Whom of you (the debt is transferred to a rich person) to settle the debt, please just accept the offer.”



EVIDENCE

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✱ Ijma

- ➔ The majority of Muslim Scholars opined that the word “please just follow” or “please just transfer” is bring the means unnecessary command, not as an obligation.
- ➔ In other words, when the person A gives a debt to B, and after a period of time, B is transfers the debt to C. C will going to pay the debt to A. A has the option, whether to accept or decline the offer.





CASE STUDY

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APPLICATION

★ Nature:

- ➔ A has a debt owing to him from B and A himself owes a debt to C. All three agree that C, instead of realizing his debt from A, and A his due from B, C shall realize his duties from B.

★ Involving:

- ➔ Guarantee= Adjoining liabilities
- ➔ Hiwalah: Transfer/ Removal

- ★ It must be absolute transfer, not subject to future and not conditional.
- ★ It may subjected to the debt incurred in the future.
- ★ Hiwalah benefits the creditor and relieves the debtor difficulty.



PILLARS OF AL-HIWALAH

DEFINITION

EVIDENCES

PILLARS

CATEGORIES

ISSUES

APPLICATION

1. Al-Muhil

- ➔ A person who transfers his debt to another person/ the transferor

2. Al-Muhal

- ➔ A creditor, whom his property/ debt is transferred to be paid by another person instead of his debtor/ the transferee

3. Al-Muhal Alaihi

- ➔ A person who accepts a hiwalah to himself/ the payer

4. Al-Muhal Bih

- ➔ The things which are transferred by Hiwalah/ the debt

5. Sighah

- ➔ Ijab (Offer)
- ➔ Qabul (Acceptance)



FLOWS OF AL-HIWALAH

DEFINITION

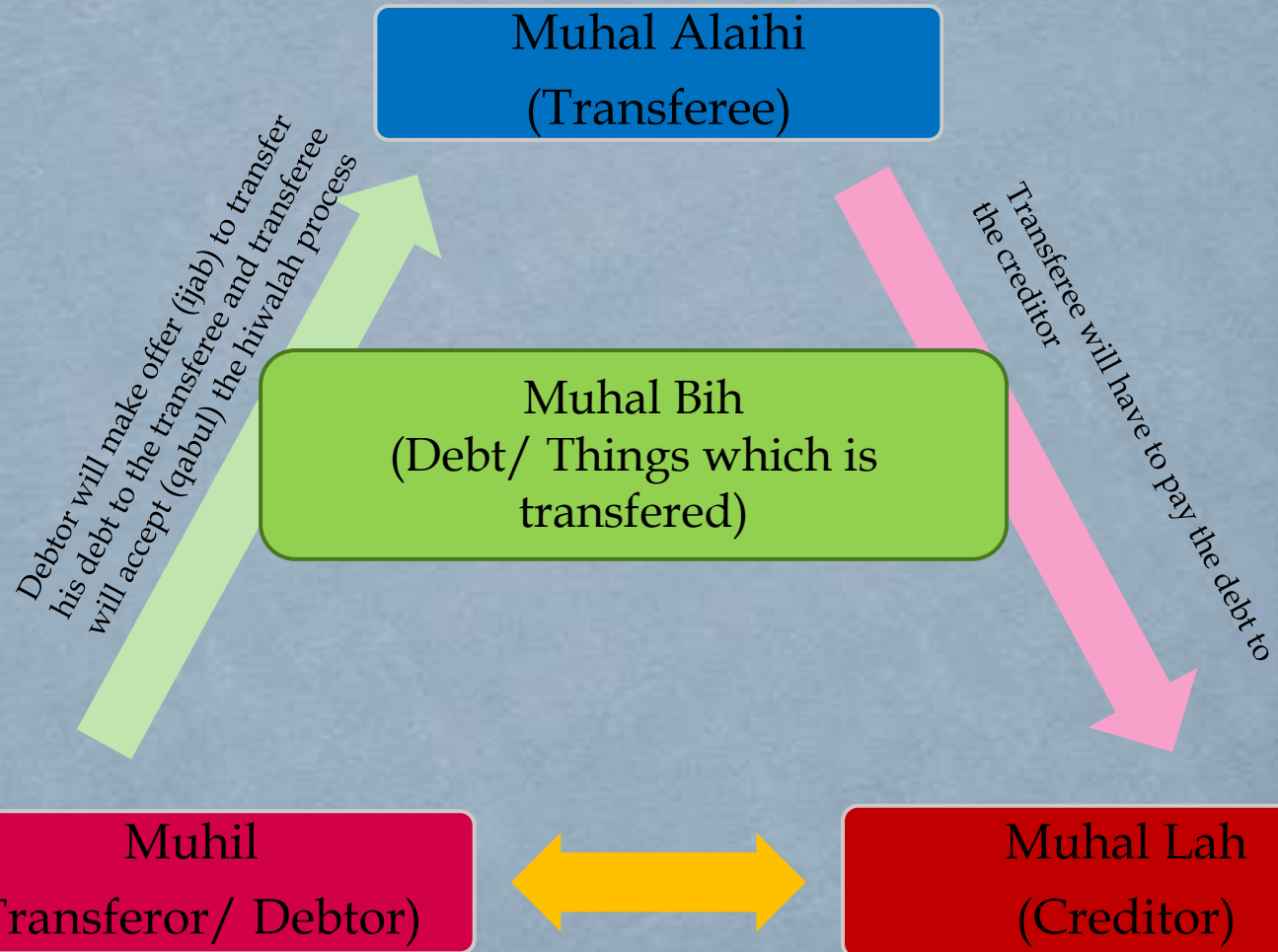
EVIDENCES

PILLARS

CATEGORIES

ISSUES

APPLICATION





CATEGORIES OF AL-HIWALAH

DEFINITION

EVIDENCES

PILLARS

CATEGORIES

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APPLICATION

1.	Hiwalah Muqayyadah	Restricted Hiwalah	Hiwalah restricted by a stipulation
			The transferee to pay from property of the transferor, owed to him by the transferee, or in the hand of the transferee
			Happen when a transfer is made with reference to the debt on the transferee.
			The majority only recognizes this type of hiwalah.
2.	Hiwalah Mutlaqah	Absolute hiwalah	A hiwalah which is not restricted for payment to be made from property of the transferor in the hands of the transferee
			Happen when the contract is concluded without reference to the debt on the transferee and he accepts the transfer.
			The majority argues that the contract is a kafalah and not hiwalah.





TYPES OF RESTRICTION

DEFINITION

EVIDENCES

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ISSUES

APPLICATION

❖ Hiwalah al-Dayn

- The transfer of a debt from an obligation of a person to another person's obligation (replacement of a debtor with another debtor)

❖ Hiwalah al-Haq

- The transfer of right or right to claim from one person to the other (replacement of a creditor with another creditor);

❖ Hiwalah al-dayn is practically inseparable from Hiwalah al-haqq because when the debt is transferred to the transferee, it transfers other all the rights such as right of guarantee or right of surety;

- ❖ If the established debt for which one debtor replaces another is a fungible established as a liability, then the transfer of debt is a valid transfer of rights, which the principal debtor is the transferor and the ultimate debtor is the transferee. (agreed);
- ❖ Example: A pawn-broker may transfer a creditor to the pawner for collection of his debt (restricted).





CONDITIONS OF AL-HIWALAH

DEFINITION

EVIDENCES

PILLARS

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ISSUES

APPLICATION

1. The parties must be legally competent to act independently
2. The relevant parties shall give their consent on the Hiwalah agreement
3. The acceptance of the creditor and the transferee should be given during the session of the contract.
4. The subject matter of Hiwalah should be debt (dain) and not a specific thing ('ain).
5. Both the transferred debt and debt to be used for settlement should be known and transferable.
6. The transferee should owe a debt to the principal debtor. If the transferee is not indebted to the principal debtor and agrees to pay to the creditor the contract is changed to kafalah. As in this case the transferee is paying for the principal debtor.
7. The principal debtor (al-muhil) should owe a debt to the creditor (al-muhal). In the absence of such a debt if the creditor (muhal) is refereed to the transferee, the contract is not a Hiwalah but is considered wakalah.





ADVANTAGES OF AL-HIWALAH

DEFINITION

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ISSUES

APPLICATION

❖ Creditor

- ➡ Could authenticate loan repayment and ensure that he/she (the creditor) could retrieve his/ her money back by demanding payment from the transferor (muhal alaih) under normal circumstances or even in case of default payment it could be retrieved from the 1st debtor (transferee)

❖ Debtor

- ➡ Minimize and spread his/her risk because he/she can remit or pass over his debt to his own debtor
- ➡ Could convince the creditor to lend him money since he/she has somebody to back him up as the transferor of the payment.





LEGAL CONSEQUENCES OF HIWALAH

DEFINITION

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ISSUES

APPLICATION

- ✳ A valid hiwalah discharged the transferor from any debt liabilities. The transferee will have no right of recourse against the transferor for payment.
- ✳ It establishes the creditor's right to demand repayment of the debt from the transferee, not the transferor
- ✳ The right and claim to receive the amount has passed to the transferee. The relationship between the transferee and the payer, whereby the transferee is entitled to claim debt assigned to him
- ✳ The relationship between the parties involved where it discharges the transferor from the debt and the claims in respect of it.
 - ➞ If the transfer was made on the condition that the payer must be solvent, then the creditor will reserve the right to recourse if the payer proves to be insolvent.
 - ➞ According to Shafie – Once transfer, cannot return back to Muhil





TERMINATION OF HIWALAH

DEFINITION

EVIDENCES

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APPLICATION

- ✱ Mutual agreement among contracting parties to terminate the hiwalah.
- ✱ The settlement of debt by the payer to the transferee.
- ✱ The death of the payer and the transferee inherit the payer's property.
- ✱ The debt has been written off by the transferee.





MODERN APPLICATION

DEFINITION

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ISSUES

APPLICATION

◆ Suftajah (Bills Of Exchange)

- ➔ By this application it enables a debtor to make payments in another place through his agent or a second person.
- ➔ Example: A person gives a portion of his property to a merchant to pay to another person in a different country. The sender benefits by insuring himself against the risks of transferring that property himself.

◆ Other banking products and facilities

- ➔ Banker's cheques
- ➔ Demand drafts
- ➔ Telegraphic transfers
- ➔ Mail transfers
- ➔ Standing instruction





END OF CHAPTER

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FIQH MUAMALAH

ISLAMIC BUSINESS TRANSACTION



CHAPTER SEVEN

AL-HIWALAH



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❖ DEFINITION

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❖ EVIDENCE

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❖ PILLARS OF AL-HIWALAH

CATEGORIES

❖ CATEGORIES OF AL-HIWALAH

APPLICATION

❖ ADVANTAGE OF AL-HIWALAH

❖ APPLICATION OF AL-HIWALAH





DEFINITION

DEFINITION

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✦ Literally

- ➞ To turn over; move or transfer

✦ Technically

- ➞ To make a transfer of a debt from one debtor to the debtor account of another
- ➞ To transfer a debt from one person (debtor) to another with the same price, it comes to the consequence than the liability of the debtor is abolished. In other words, the first obligator is freed from any financial obligations.
- ➞ Hiwalah is a contract which caused the transfer of debt from one party to another.
- ➞ According to Mughni Muhtaj, the term Hiwalah is refer to the debt transfer from a party/person to another.





DEFINITION

DEFINITION

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APPLICATION

- ✦ Through the transfer of a claim of a debt, the responsibility for its settlement is shifted from one person to another.
- ✦ Hiwalah is similar to the sale of debt but is not sale, it also resemble kafalah and wakalah.
- ✦ However, it is a unique contract which has its own distinct features and condition.
- ✦ The three important participants in a hawalah contract are: the principal debtor, the creditor and the transferee.
- ✦ When a valid hawalah is concluded, the debt is no longer demanded from the principal debtor.
- ✦ This is because in hawalah, the debt is transferred from the principal debtor to the transferee.
- ✦ Furthermore, hawalah establishes a right for the creditor to demand the settlement of debt from the transferee.





EVIDENCE

DEFINITION

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✦ Hadith

- ➞ The Prophet S.A.W: “The deferment (of paying debt) by the richer is an injustice. When there is one of you, get the offer from other to transfer your debt to another person, just accept it”

✦ Hadith 2

- ➞ In Riwayat Ahmad, Prophet Muhammad S.A.W: “Whom of you (the debt is transferred to a rich person) to settle the debt, please just accept the offer.”





EVIDENCE

DEFINITION

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APPLICATION

✦ Ijma

- ➞ The majority of Muslim Scholars opined that the word “please just follow” or “please just transfer” is bring the means unnecessary command, not as an obligation.
- ➞ In other words, when the person A gives a debt to B, and after a period of time, B is transfers the debt to C. C will going to pay the debt to A. A has the option, whether to accept or decline the offer.





CASE STUDY

DEFINITION

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APPLICATION

◆ Nature:

- ➔ A has a debt owing to him from B and A himself owes a debt to C. All three agree that C, instead of realising his due from A, and A his due from B, C shall realise his duties from B.
- ➔ Guarantee= Adjoining liabilities/ Hawalah: Transfer/ Removal
- ➔ It must be absolute transfer, not subject to future and not conditional.
- ➔ It may be subjected to the debt incurred in the future.
- ➔ Hawalah benefits the creditor and relieves the debtor difficulty.





PILLARS OF AL-HIWALAH

DEFINITION

EVIDENCES

PILLARS

CATEGORIES

APPLICATION

- ✦ Muhil
 - ➞ A person who is transfers his debt to another person.
- ✦ Muhal-Lah
 - ➞ A creditor, whom his property/ debt is transferred to be paid by another person instead of his debtor.
- ✦ Muhal Alaihi
 - ➞ Tranferee– a person who accept a hiwalah to himself
- ✦ Muhal Bih
 - ➞ The things which is transferred by Hiwalah
- ✦ Sighah
 - ➞ Ijab (Offer)
 - ➞ Qabul (Acceptance)





FLOWS OF AL-HIWALAH

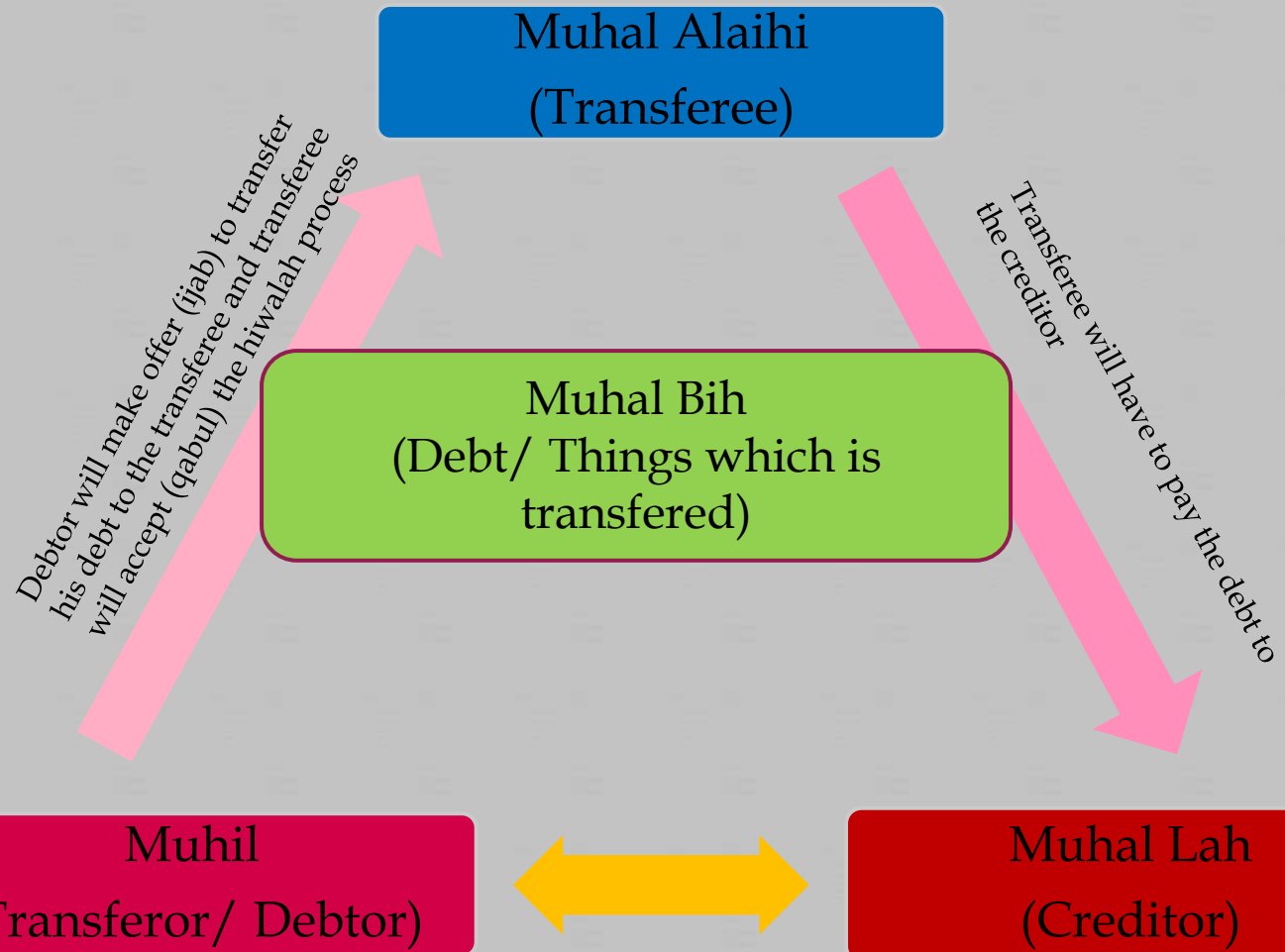
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CATEGORIES OF AL-HIWALAH

DEFINITION

EVIDENCES

PILLARS

CATEGORIES

APPLICATION

✦ Hiwalah Muqayyadah

- ➞ Restricted hawalah
- ➞ A hiwalah restricted by a stipulation, for the transferee to pay from property of the transferor, owed to him by the transferee, or in the hand of the transferee
- ➞ This type of hiwalah when a transfer is made with reference to the debt on the transferee. The majority only recognizes this type of hiwalah.

✦ Hiwalah Mutlaqah

- ➞ Absolute hiwalah
- ➞ A hiwalah which is not restricted for payment to be made from property of the transferor in the hands of the transferee
- ➞ This is a type of hawalah where the contract is concluded without reference to the debt on the transferee and he accepts the transfer. The majority argues that the contract is a kafalah and not hiwalah.





TYPES OF RESTRICTION

DEFINITION

EVIDENCES

PILLARS

CATEGORIES

APPLICATION

- ★ Hawalah al-Dayn
 - The transfer of a debt from an obligation of a person to another person's obligation (replacement of a debtor with another debtor)
- ★ Hawalah al-Haq
 - The transfer of right or right to claim from one person to the other (replacement of a creditor with another creditor);
- ★ Hawalah al-dayn is practically inseparable from Hawalah al-Haqq because when the debt is transferred to the transferee, it transfers other all the rights such as right of guarantee or right of surety;
- ★ If the established debt for which one debtor replaces another is a fungible established as a liability, then the transfer of debt is a valid transfer of rights, which the principal debtor is the transferor and the ultimate debtor is the transferee. (agreed);
- ★ Example: A pawn-broker may transfer a creditor to the pawner for collection of his debt (restricted).





CONDITIONS OF AL-HIWALAH

DEFINITION

EVIDENCES

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APPLICATION

1. The parties should be competent
2. The parties should agree with the hawalah
3. The acceptance of the creditor and the transferee should be given during the session of the contract.
4. The subject matter of hawalah should be debt (dain) and not a specific thing ('ain).
5. The transferee should owe a debt to the principal debtor. If the transferee is not indebted to the principal debtor and agrees to pay to the creditor the contract is changed to kafalah. As in this case the transferee is paying for the principal debtor.
6. Both the debts should be known.
7. The principal debtor (muhiil) should owe a debt to the creditor (muhal). In the absence of such a debt if the creditor (muhal) is referred to the transferee, the contract is not a hawalah but is considered wakalah.





ADVANTAGES OF AL-HIWALAH

DEFINITION

EVIDENCES

PILLARS

CATEGORIES

APPLICATION

✦ Creditor

- ➞ Could authenticate loan repayment and ensure that he/she (the creditor) could retrieve his/ her money back by demanding payment from the transferor (muhal alaih) under normal circumstances or even in case of default payment it could be retrieved from the 1st debtor (transferee)

✦ Debtor

- ➞ Minimize and spread his/her risk because he/she can remit or pass over his debt to his own debtor
- ➞ Could convince the creditor to lend him money since he/she has somebody to back him up as the transferor of the payment.





LEGAL CONSEQUENCES OF HAWALAH

DEFINITION

EVIDENCES

PILLARS

CATEGORIES

APPLICATION

- ✱ The debtor is freed from a debt by another becoming responsible for it; the transfer of claim of a debt. (absolution of the transferor);
- ✱ It establishes the creditor's right to demand repayment of the debt from the transferee, not the transferor (unless if the transferee denies without proof wrongfully on him or dies bankrupt or the principal creditor absolves the transferee of debt- Valid);
- ✱ The relationship between the parties involved where it discharges the transferor from the debt and the claims in respect of it.
 - ➡ If the transfer was made on the condition that the payer must be solvent, then the creditor will reserve the right to recourse if the payer proves to be insolvent.
 - ➡ According to Shafie – Once transfer, cannot return back to Muhil
- ✱ The right and claim to receive the amount has passed to the transferee. The relationship between the transferee and the payer, whereby the transferee is entitled to claim debt assigned to him





MODERN APPLICATION

DEFINITION

EVIDENCES

PILLARS

CATEGORIES

APPLICATION

- ◆ Suftajah (Bills Of Exchange)
 - ➞ By this application it enables a debtor to make payments in another place through his agent or a second person.
 - ➞ Example: A person gives a portion of his property to a merchant to pay to another person in a different country. The sender benefits by insuring himself against the risks of transferring that property himself.
- ◆ Other banking products and facilities
 - ➞ Issuance of a cheque against a current account(Issuer = transferor/ Bank = Transferee/ Beneficiary = Creditor)
 - ➞ Overdrawing from an account or overdraft: Issuer = Transferor (no balance)/ Beneficiary = Creditor (get cheque)/ Bank =Transferee.
- ◆ Endorsement of a negotiable instrument.
- ◆ Transfer of money (remittance).





END OF CHAPTER

DEFINITION

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APPLICATION



FIQH MUAMALAT

فقه معاملات



BAY' AL-TAWARRUQ

بيع التورق



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UNIVERSITI
TEKNOLOGI
MARA





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- ✱ PILLARS OF BAY' AL-TAWARRUQ
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- ✱ CONDITIONS OF BAY' AL-TAWARRUQ
- ✱ MODERN APPLICATION



DEFINITION

DEFINITION

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◆ Literal:

➞ Minted silver; seeking silver money

◆ Technical:

➞ Buying a commodity with deferred payment and selling it to a person other than the buyer for a lower price with immediate payment.

➞ Purchasing a commodity on credit and selling it to a person other than the initial seller for a lower price on cash

◆ Tawarruq is a term commonly used by Hanbali school of law

◆ Other school mention the form of tawarruq under the rubric or bay' al-ajal and bay' al-'inah



EVIDENCES

DEFINITION

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✱ Qiyas:

- ➡ Permissible based on analogy, the contract is similar to other sale and purchase contracts i.e. the transfer of ownership is taken place





PILLARS OF BAY' AL-TAWARRUQ

DEFINITION

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APPLICATION

- ✱ Original seller
- ✱ Final buyer
- ✱ Mutawarriq
- ✱ Wariq
- ✱ Commodity



FLOWS OF BAY' AL-TAWARRUQ

DEFINITION

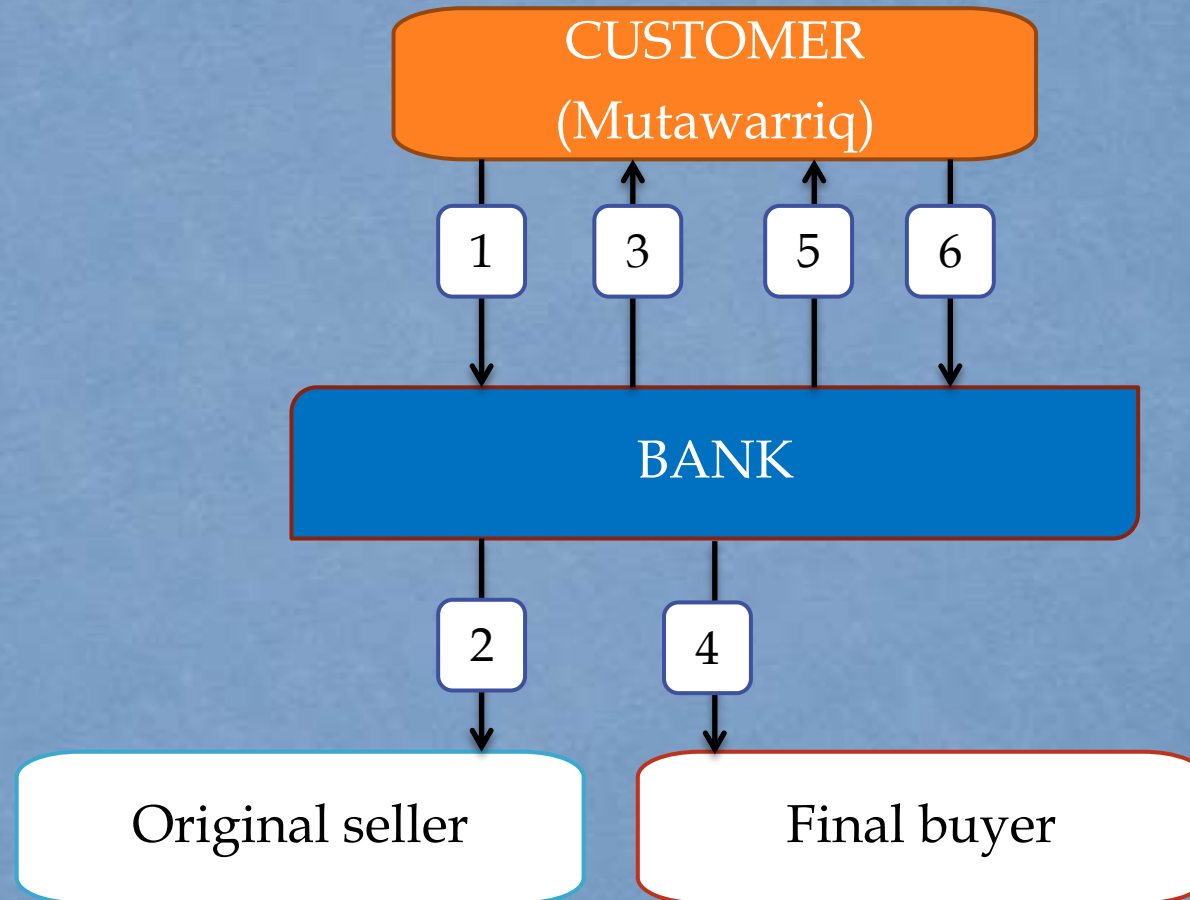
EVIDENCES

PILLARS

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TYPES OF AL-TAWARRUQ

DEFINITION

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TAWARRUQ AL-FARDH

- Define by OIC Fiqh Academy as the purchase of commodity possessed and owned by the seller for a delayed payment, whereupon the buyer will resell the commodity for cash to other than the original seller in order to acquire cash.

TAWARRUQ AL-MUNAZZAM

- The process handle by the saller by which cash is acquired for the mutawarriq (seeker of cash). He does so by selling a commodity to him for a delayed payment, he then sells it on behalf for cash by taking the payment from the buyer and handling it over to themutawarriq.

TAWARRUQ AL-MASRAFI

- Process where the IFI formally organises the sale of a commodity (other than gold/silver) between an international commodity market and the mutawarriq, for a delayed payment on a binding condition that may be stipulated in the contract or to the custom and norms guiding such a commodity



TYPES OF TAWARRUQ

TAWARRUQ AL-FARDI

TAWARRUQ AL-MUNAZZAM

DEFINITION

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Original seller does not play any role in the resale of the commodity and has no relation with the final buyer

The original seller act as an intermediary by selling the commodity for cash on behalf of the mutawarriq

The cash will be taken by the mutawarriq directly from the final buyer without the seller being involved

The mutawarriq receives the cash from the original seller, to whom he owes the delayed price

The original seller has not information and relation with the final buyer

The original seller might agree beforehand with the final buyer that he will purchase the commodity

Accepted by majority of jurists (Hanafi, Maliki and Hanbali) and Majma' al Fiqh al Islami

Rejected by majority of jurist. But accepted to be practice by current fiqh scholars and IFI Shariah Advisory Council



CONDITIONS OF BAY' AL-TAWARRUQ

DEFINITION

Ownership of the commodities.

- The seller must own the commodity before selling it to the buyer.

EVIDENCES

Commodity is specified.

- The seller has to explain the details of the commodity to the buyer.

PILLARS

Possession of commodities.

- The commodities which are normally used in the contract of organized tawarruq can be transferred from place to place and this kind of commodity is called a transferable commodity (manqulat). Examples include metals, cement, rice and cars.

TYPES

Avoiding 'inah sales.

- As has been mentioned, the majority of jurists consider that 'inah sales are prohibited according to Islamic law. Therefore, financial institutions avoid buying the commodities again from the client because they have already sold them to the client by installment payments for more than what they normally pay to acquire the commodities. Consequently, if they were to buy the commodities from the clients for less than what the client had paid, the contract would be an 'inah sale.

CONDITIONS

APPLICATION





CONDITIONS OF BAY' AL-TAWARRUQ

DEFINITION

Details of the time of payments.

- The contract between the financial institution as the seller and the client as the buyer is based on the contract of installment sales or deferred sales in general and one of the conditions of the both contracts is that it must explain in detail the manner of payment.

EVIDENCES

PILLARS

Avoiding usury

- The contracting parties have to be careful not to deal with commodities, which it is not permissible to exchange for deferment, otherwise, they would be involved in the usury by way of deferment (riba al-nasi'a).

TYPES

Delivery is immediate.

- As indicated previously, the contract of organized tawarruq is based on deferred or installment payment so if the delivery is deferred, the contract would then be a sale of debt-for-debt and this kind of sale is prohibited in Islamic law.

CONDITIONS

APPLICATION





APPLICATION

DEFINITION

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✱ Tawarruq or commodity murabahah as one of the popularly used principles to structure various Islamic financial instruments. Below list of some common Islamic financial instruments that are structured based on tawarruq:

- ➞ Commodity murabahah deposit facility and placement
- ➞ Personal financing
- ➞ Asset financing
- ➞ Cash line facility
- ➞ BNM Islamic Accepted Bills (IAB)
- ➞ Islamic Private Debt Securities (IPDS)





END OF CHAPTER

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FIQH MUAMALAT

فقه معاملات

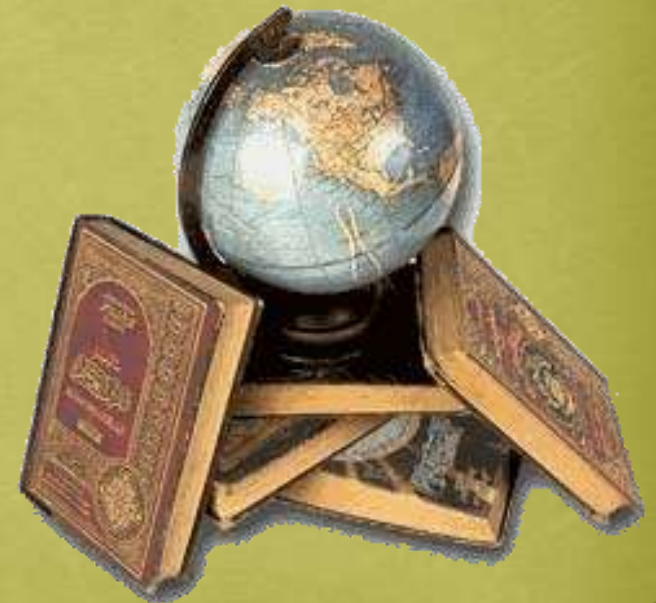


BAY' AL-'INAH

بيع العينة



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UNIVERSITI
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- ❖ PILLARS OF BAY AL-'INAH
- ❖ CONDITIONS OF BAY AL-'INAH
- ❖ OPINION OF SCHOLARS
- ❖ MODERN APPLICATION



DEFINITION

DEFINITION

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OPINION OF
SCHOLARS

APPLICATION

✱ Literal:

➞ Loan or advanced payment

✱ Technical:

➞ The selling of an asset with a mark up price on deferred payment, with the intention to sell the same asset to the debtor with lower cash price, which is meant to settle his debt.



DEFINITION

DEFINITION

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SCHOLARS

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❖ Imam al-Shafii:

- ➞ It is a credit purchase of an asset which is later sold to the original owner or a third party, whether at a deferred or spot, higher or lower price than the first contract, or for an exchange of goods.

❖ Ibn Qudamah:

- ➞ It is a sale of an asset with a deferred price, and buys back the same asset at a lower price.

❖ It is a bargaining (musawamah) sale and purchase contract i.e. without disclosing or referring to what the cost price is.

❖ Bay` al-`Inah conceptually refers to a sale of an asset, which is later repurchased at a different price, whereby the deferred price is higher than the cash price.



EVIDENCES

DEFINITION

EVIDENCES

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✱ Hadith:

- ➞ Rasulullah (s.a.w) has ordered Amru ibn al As to prepare the army for the battle. He then purchased a camel in exchange for a delayed payment of 2 camels
- ➞ Narrated by al-Bukhari



EVIDENCES

DEFINITION

EVIDENCES

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SCHOLARS

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✱ Muslim scholars:

- ➞ Permissible based on analogy, the contract is similar to other sale and purchase contracts i.e. the transfer of ownership is taken place.
- ➞ The majority view that such a sale is forbidden. They are Hanafis, Malikis, Hanbalis and some Shafi'is.
- ➞ Imam Shafi'i, Abu Yusuf, Abu Daud and Abu Thur are of the view that this contract of sale is not contrary to Shariah principles.



PILLARS OF BAY' AL-'INAH

DEFINITION

EVIDENCES

PILLARS

OPINION OF
SCHOLARS

APPLICATION

- ❖ Seller and buyer
- ❖ Merchandise/ goods
- ❖ Price
- ❖ Sighah



FLOWS OF BAY' AL-'INAH

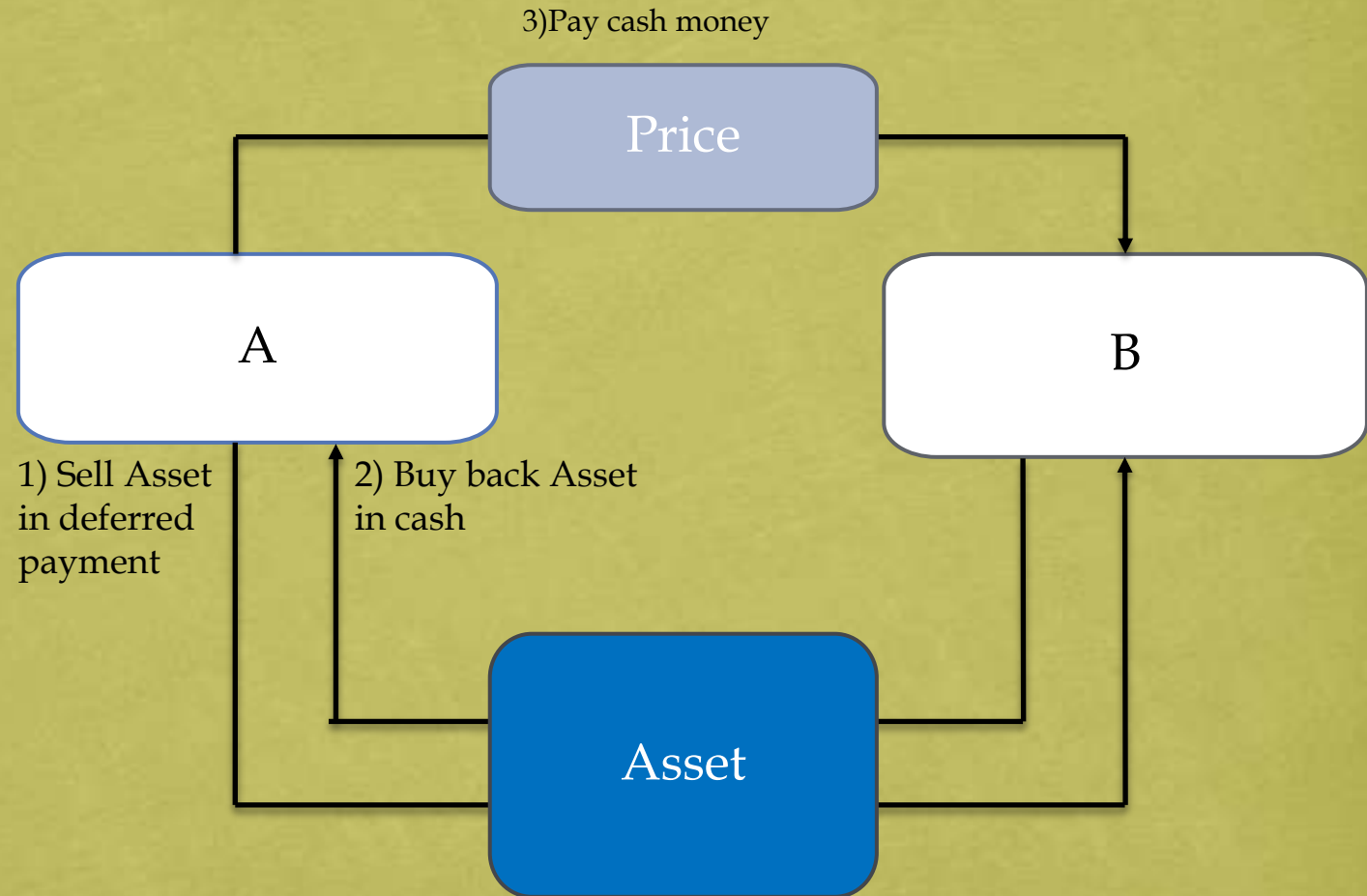
DEFINITION

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CONDITIONS OF BAY' AL-'INAH

DEFINITION

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OPINION OF SCHOLARS

APPLICATION

- ✱ Shariah Advisory Council of Bank Negara Malaysia resolved that bay' al-'inah is still necessary in Malaysian context.
- ✱ However market player are required to strengthen and enhance their operational process and documentation to comply with the features of bay' al-'inah permitted.
- ✱ Bay' al-'inah is permissible subject to the following condition:
 - ➡ The transaction of al-'inah must strictly follow the mechanism which is accepted by the Shafie school
 - ➡ The transacted item must not a ribawi item
 - ➡ The buyer must receive (take possession) the good before selling it back to the original seller



OPINION OF SCHOLARS

DEFINITION

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OPINION OF
SCHOLARS

APPLICATION

✿ Scholars are divided into two group:

1. Those that prohibit

- ➔ Majority of the scholar including Hanafi, Maliki and Hanbali prohibit al-'inah transaction
- ➔ The same result adopted by the Shariah council of AAOIFI and majority of Shariah Advisory Council in Malaysia and Brunei

2. Those that permit

- ➔ Includes Imam Shafie and supported by Ibn Hazm and Shariah Advisory Council of Bank Negara Malaysia





JUSTIFICATION OF THOSE THAT PROHIBIT

DEFINITION

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- ✱ It is hilah to riba
- ✱ The underlying issue on bay' al-'inah is the difference between the muqtada al-'aqd and the actual motive of the contracting parties, whether to have a real contract of sale or as hilah for liquidity or monetary purposes.
- ✱ The polemic in the issue of permissibility of bay' al-'inah is the status of hilah.
- ✱ As far as hilah is deemed as demeaning the religion, bay' al-'inah will not be acceptable.
- ✱ However, if hilah is regarded as a mode to solve problems (makhraj) that is much needed by the people, bay' al-'inah transaction may be acceptable.





JUSTIFICATION OF THOSE THAT PERMIT

DEFINITION

EVIDENCES

PILLARS

OPINION OF SCHOLARS

APPLICATION

- ✱ Shafii approved bay' al-'inah as financing mode
- ✱ A sale which is followed by a subsequent sale but without any intention to have al-'inah arrangement.
- ✱ Al-'Inah that involves two contracts of sale in which the price of each contract (either cash or deferred) is similar to the other.
- ✱ Al-'Inah which is concluded on an asset with a gap of time between the two contracts, the purchase and sale contracts.
- ✱ Al-'Inah which is concluded on an asset which has changed in certain aspect.





APPLICATION

DEFINITION

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SCHOLARS

APPLICATION

✱ Bay' al-'inah has been used to construct numerous financing product offered by the bank in Malaysia:

- ➞ Personnel financing
- ➞ Working Capital Financing
- ➞ Istisna' between 2 parties
- ➞ BBA financing products
- ➞ Islamic credit card
- ➞ Sukuk BBA
- ➞ Sukuk Murabahah
- ➞ Islamic Overdraft
- ➞ Murabahah Trade Financing





END OF CHAPTER

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FIQH MUAMALAT فقه معاملات

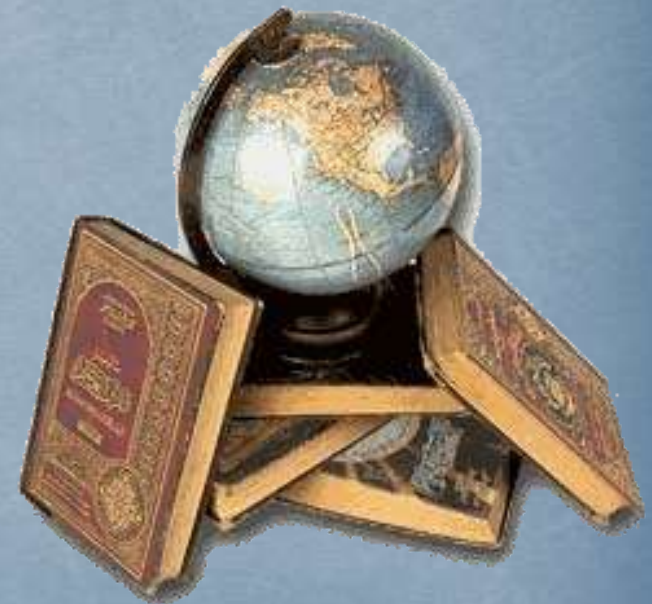


AL-MURABAHAH

مرابحه



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- ✱ DEFINITION
- ✱ EVIDENCE
- ✱ PILLARS
- ✱ CONDITION OF MURABAHAAH
- ✱ CONDITION OF PROFITS
- ✱ APPLICATION OF MURABAHAAH





DEFINITION

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❖ Literally:

➔ From word al-ribh () which means increase in capital or profit of trading

❖ Technically

➔ Sale in which the mark up is disclosed to the purchaser as per the seller's purchase price for a trust-sale for a certain specific asset.

❖ Murabahah is a type of contract, a form of sale, where the seller expressly mentions the cost of the sold commodity he has incurred, and sells it to another person (the buyer) by adding some profit or mark-up thereon.

❖ Mechanism has to be conducted with complete sincerity/trust by the seller/financier by stating the cost price of the purchase and the total profit incurred clearly and truthfully. Hence, a sale based on trust (amanah).



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- ✱ Al-murabahah is a legitimate contract in Islam.
- ✱ Majority of fuqaha comprising the sahabah (companion of the prophet), the tabien (followers of the sahabah), and imam of the mazhab considered al-Murabahah as a permissible contract based on rukhsah principle.
- ✱ Al-Quran

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

Allâh has permitted trading and forbidden Ribâ (usury)

يَتَأَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ

O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent



EVIDENCES

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✱ Hadith

- ➞ Some scholars made murabahah analogous to a form of sale called Tawliyyah (sale at purchase price without making profit)
- ➞ It was reported that when Prophet (s.a.w) was preparing for hijrah to Madinah, Abu Bakar bought 2 camels for the journey. The Prophet (s.a.w) said to Abu Bakar: Sell to me (at cost without profit) one of them. Abu Bakar said: It is yours for nothing. The Prophet (s.a.w) said: I would not take it without price.



PILLARS OF AL-MURABAHAH

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1. Seller
2. Buyer
3. Merchandise or goods
4. Price
5. Sighah: Offer (Ijab) and Acceptance (Qabul)



FLOWS OF AL-MURABAHAH

DEFINITION

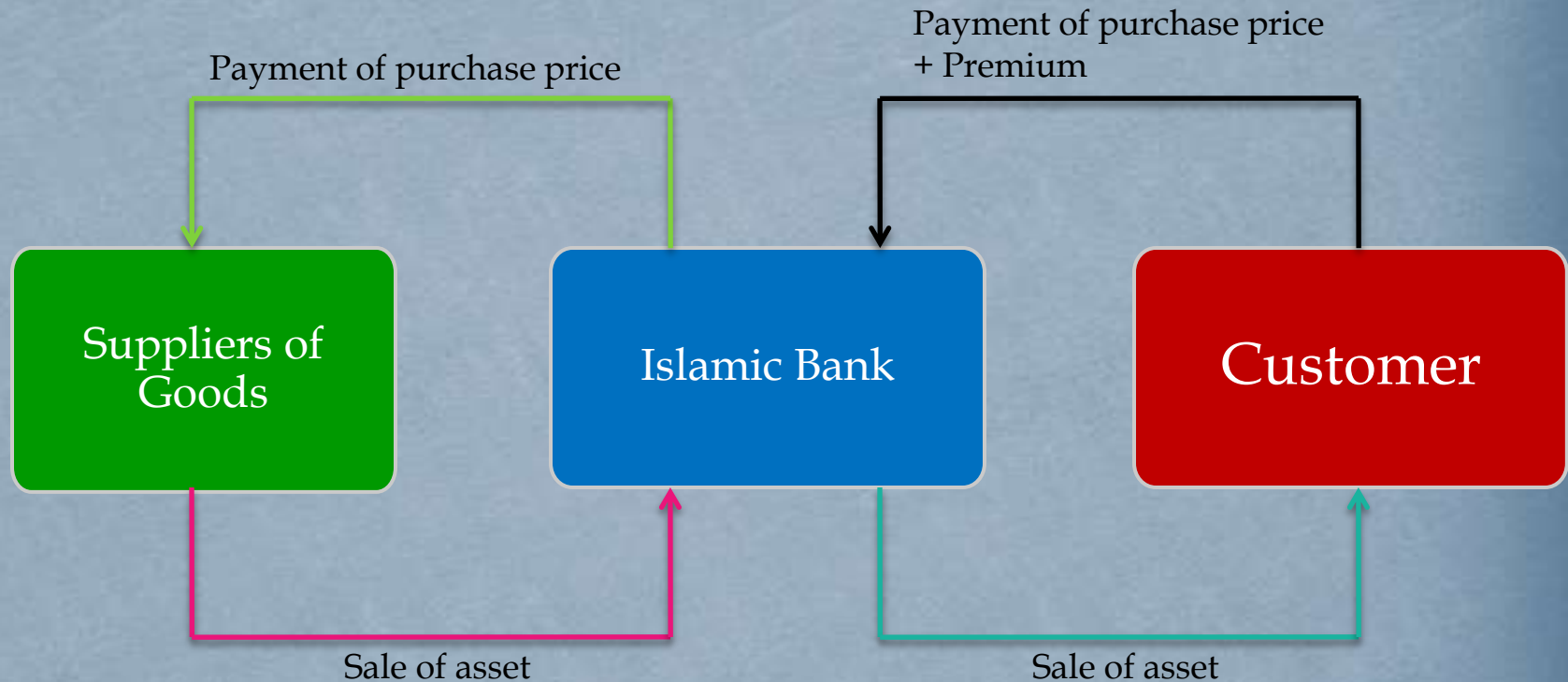
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CONDITIONS OF AL-MURABAHAH

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✱ 5 important elements for condition of al-murabahah:

1. Product and selling price
2. Contracting parties
3. Offer and acceptance
4. No riba trading shall be involved
5. The initial contract must be valid



CONDITION OF AL-MURABAHAH

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1. Product and selling price

- ➔ Product must be clearly defined including its type, quantity and other descriptions.
- ➔ Selling price- its cost and profit must also be disclosed clearly and truthfully.
- ➔ Act of concealing cost price and/or margin of profit render transaction null and void.

2. Contracting parties

- ➔ Seller/ financier – responsible for supplying the product ordered by the buyer.
- ➔ Buyer/ customer – obligated to pay for the product he purchased according to agreed terms of the agreement.
- ➔ Both must be adults, rational, intelligent and can be held accountable.



CONDITION OF AL-MURABAHAH

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3. Offer and acceptance

- ➔ It shall contain the two important elements mentioned i.e.. Cost price and rate of profit.
- ➔ The original price must be fungible i.e.. The price at which the seller obtained the goods must be measured by weight, volume or number of homogeneous goods.

4. No riba trading shall be involved.

- ➔ Products traded cannot be paid by barter system from ribawi items prohibited by the Prophet (s.a.w)
 - ➔ i.e.. Gold for gold, silver for silver, wheat for wheat, flour for flour, dates for dates and salt for salt and barley for barley unless weight, measurement and the calculations are equal.
- ➔ Also forbidden egg. Selling 100kg of good flour at the price of 120kg of sub quality flour – constitutes riba.

5. The initial contract must be valid.

- ➔ The traded item or property must be lawfully owned by the seller according to Shariah requirements.





CONDITIONS OF PROFIT

DEFINITION

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APPLICATIONS

- ✱ The amount of profit charged can be in several form:
 1. Ratio : Charge RM100 for every RM1000
 2. Percentage : Charge 15% profit from cost
 3. Fixed amount : Charge fixed amount of money
- ✱ Minimum amount of profit recommended is the amount that can sufficiently cover payment of business zakat (2.5%) and other expenses bear by the trader
- ✱ No limit to the amount of profit the traders can legitimately charge the customers since no evidence that specifies any amount permitted for the traders to do so.





NON-SPECIFICATION OF PROFIT RATE IN TRADE

DEFINITION

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APPLICATIONS

Reason to the non-specification of amount of profit in trade:

1. Limitation of profit rate allowable is something against the rule of fair and justice
2. Differences between types of goods that have fast circulation in nature compared to product that have rather slow circulation or slow demand; hence profit rate for the former should be different from the latter
3. Differences between traders sell product in small quantity than those sell massive amount of product
4. Differences between traders deal in cash compared to those that can accept credit or deferred payment
5. Differences between goods that considered necessity (dharuriyyah) compared to complementary (hajiyyah) and luxury (kamiliyyah) goods. Necessity goods should be charge lower profit as it is needed item.
6. Differences between traders that easily acquire their product from those that can only acquired it through difficult process. Or traders that sell raw product compared to modified product.





ISSUES IN MURABAHAH CONTRACT

DEFINITION

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APPLICATIONS

- ✱ Murabahah is trust based contract and everything should be disclosed including cost price and mode of payment. There are several issues related to murabahah:

1. Rebate in the event of default

- ➡ Issues is whether the bank must give rebate to the customer in case of default or to give early settlement or not.

2. Disclosure of cost price

- ➡ The seller obliged to disclose the actual cost; if the exact cost cannot be ascertained or unknown, it is impossible to have murabahah contract

3. Use of the interest rate as a benchmark

- ➡ Many IFI do murabahah financing to determine profit ot mark up on the basis of current interest rate using conventional interest rate benchmark or rating





APPLICATION

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- ✱ Islamic financial institutions aim to make use of bay al-Murabahah in circumstances where they will purchase raw materials, goods or equipment etc. and sell them to a client at cost, plus a negotiated profit margin to be paid normally by installments.
- ✱ Among others applications of contract of murabahah in Islamic banking are:
 - ➞ Murabahah financing
 - ➞ Bank's treasury product through murabahah commodity
 - ➞ Issuance of sukuk murabahah
 - ➞ International trade financing





MODERN APPLICATION

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★ Tri-partied Murabahah

- ➞ Based on Murabahah lil-amir bisshira (Murabahah to the purchase order) concept.
- ➞ Widely applicable because used as one of financing tools by Islamic banks worldwide.
- ➞ Murabahah to the purchase orderer (MPO) for a pre-agreed selling price, which includes a pre-agreed profit mark-up over its cost price, this having been specified in the customer's promise to purchase. The payment is payable within a fixed future date in lump sum or by fixed installments
- ➞ It is one of the usual practicalities adopted by the Islamic banks in Malaysia for assets like car, house and etc.





TRI-PARTIED MURABAHAH

DEFINITION

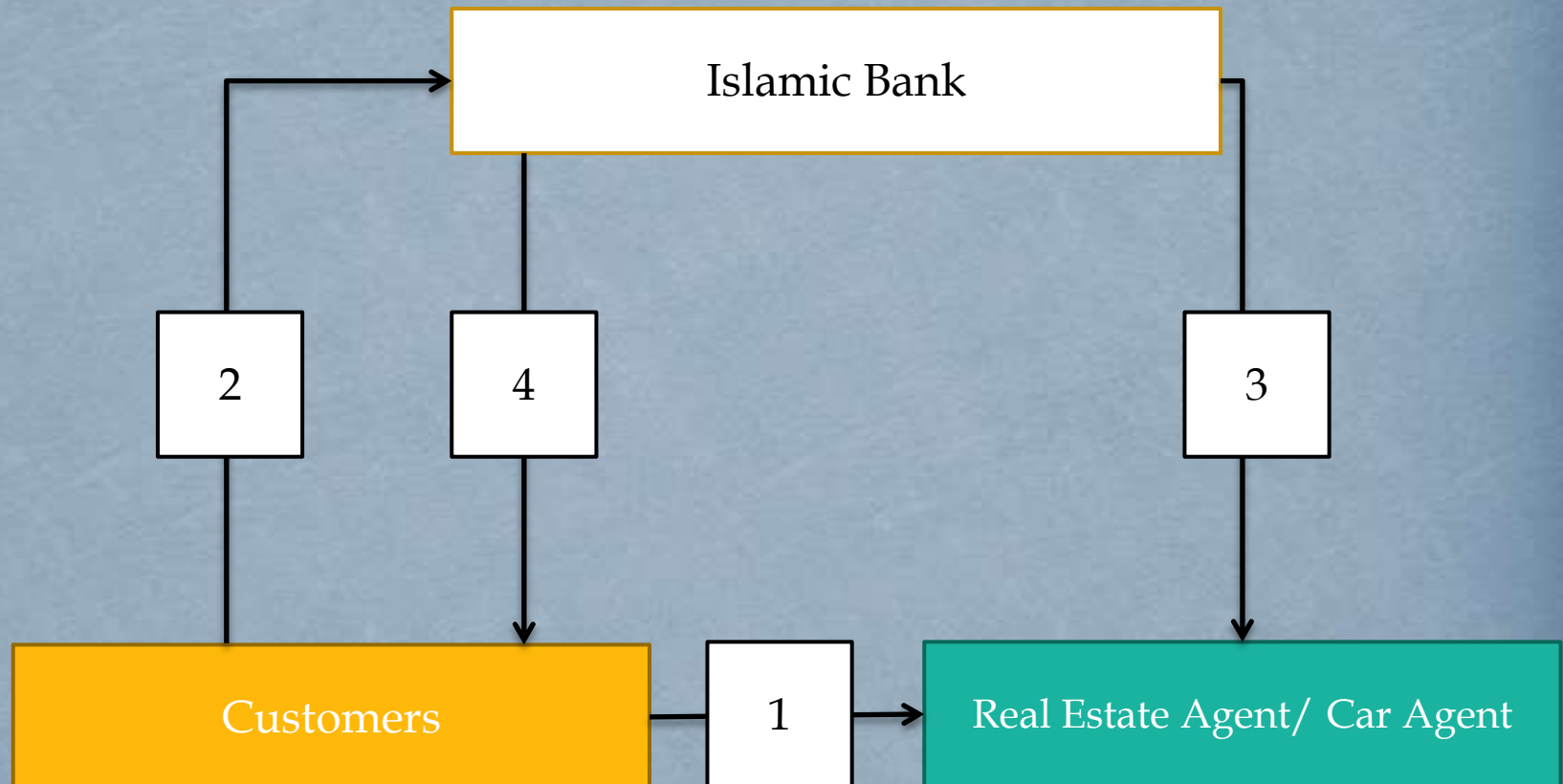
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MODERN APPLICATION

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❖ Sukuk Murabahah

- ➔ Sukuk defined as trust certificate or participation securities which grant the investor a share of an asset along with the cash flows and risk commensurate with such ownership.
- ➔ Sukuk holder are entitled to shared in the revenues generated by the sukuk assets and proceeds of the realization of the sukuk assets.





SUKUK MURABAHAH

DEFINITION

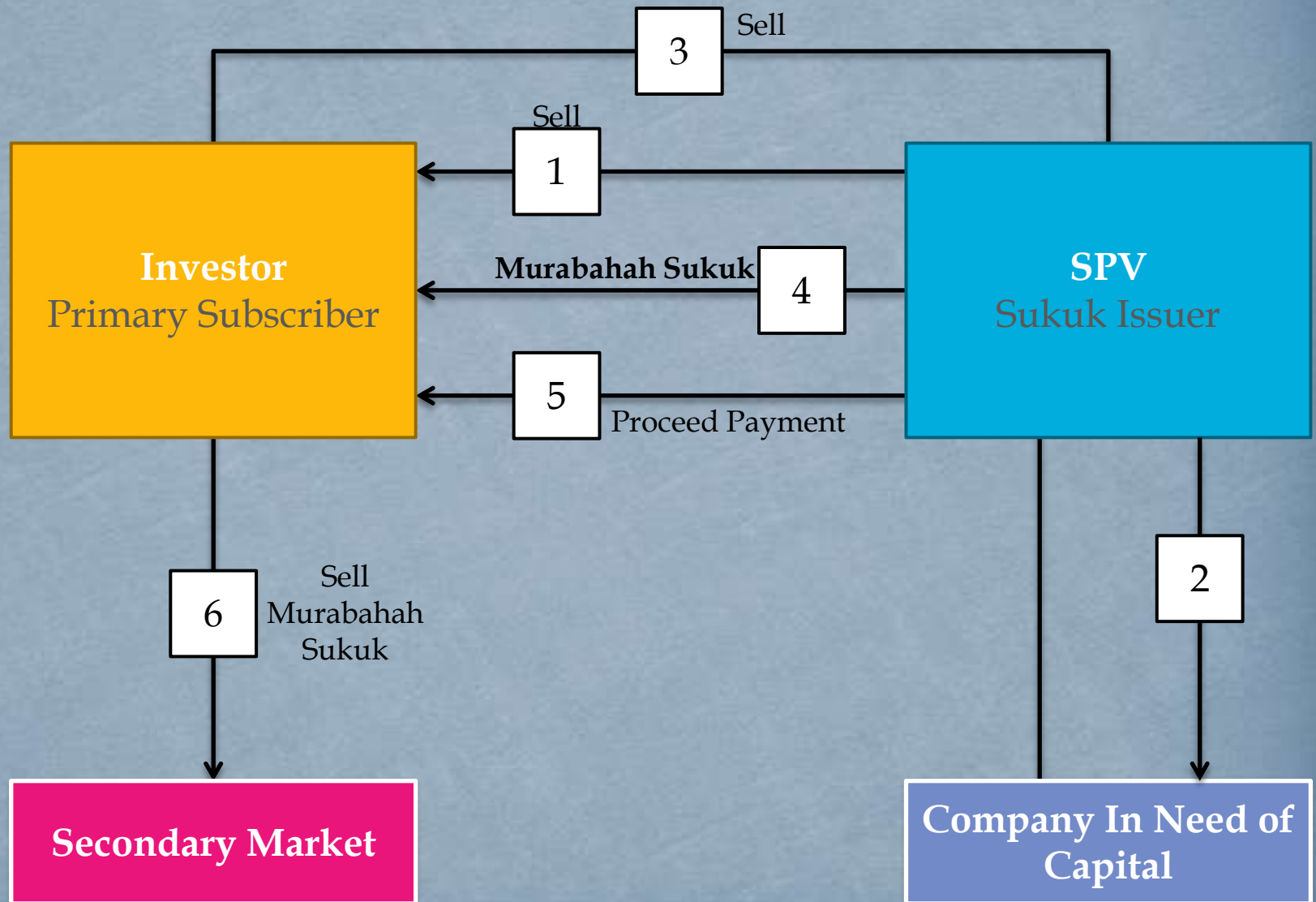
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FIQH MUAMALAH

ISLAMIC BUSINESS TRANSACTION



CHAPTER EIGHT

AL-MURABAHAH



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✦ DEFINITION

✦ EVIDENCE

✦ PILLARS

✦ CONDITION OF MURABAHAH

✦ CONDITION OF PROFITS

✦ APPLICATION OF MURABAHAH

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APPLICATION





DEFINITION

DEFINITION

✦ Literally:

➞ From word al-ribh () which means increase of profit

✦ Technically

➞ Selling a commodity for its purchase price plus a specified mark-up or profit agreed upon

✦ Murabahah is a type of contract, a form of sale, where the seller expressly mentions the cost of the sold commodity he has incurred, and sells it to another person (the buyer) by adding some profit or mark-up thereon.

✦ Mechanism has to be conducted with complete sincerity/trust by the seller/financier by stating the cost price of the purchase and the total profit incurred clearly and truthfully. Hence, a sale based on trust (amanah).

EVIDENCE

PILLARS

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EVIDENCES

DEFINITION

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- ✦ Al-murabahah is a legitimate contract in Islam. Majority of fuqaha comprising the sahabah (companion of the prophet), the tabien (followers of the sahabah), and imam of the mazhab considered al-Murabahah as a permissible contract based on rukhsah principle.
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DEFINITION

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2. Buyer
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FLOWS OF AL-MURABAHAH

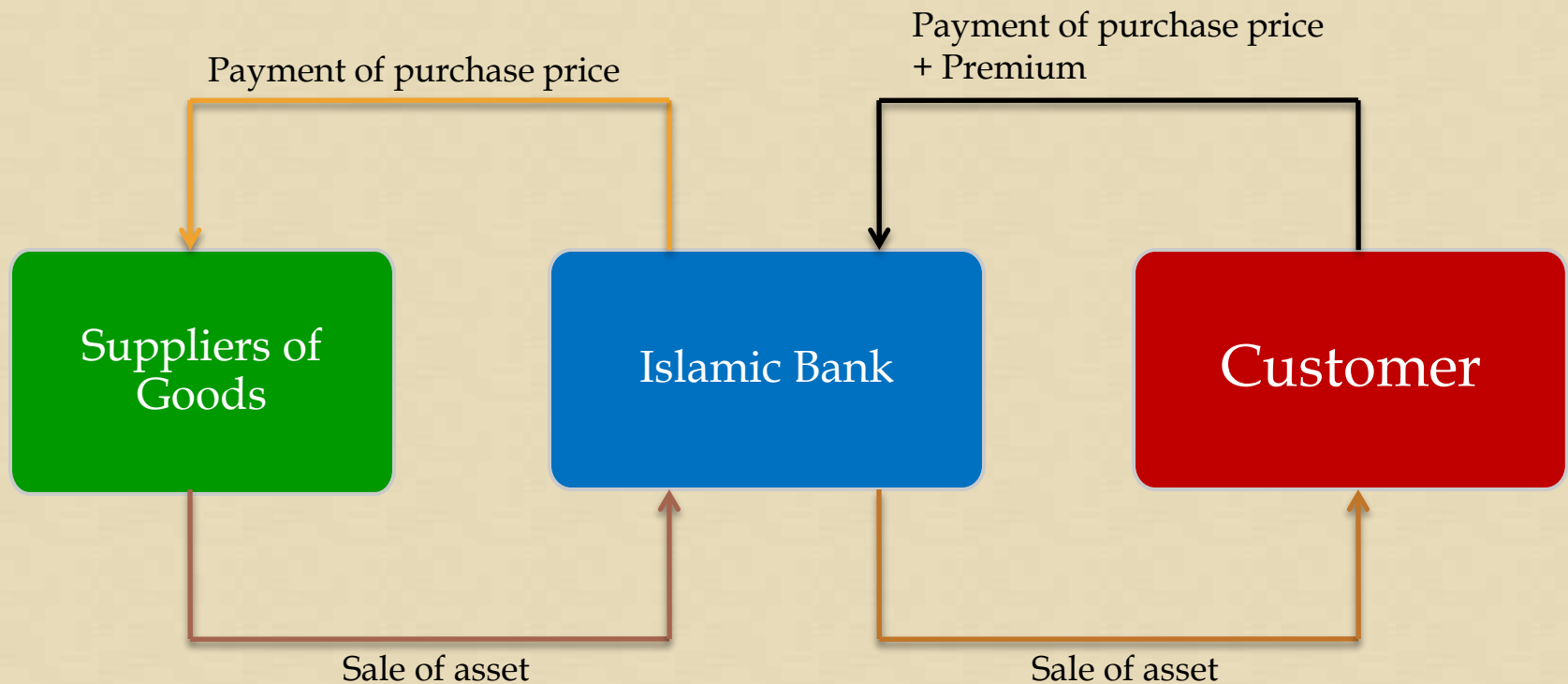
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CONDITIONS OF AL-MURABAHAH

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CONDITION OF AL-MURABAHAAH

DEFINITION

EVIDENCE

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APPLICATION

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 - It shall contain the two important elements mentioned ie. Cost price and rate of profit.
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CONDITION OF AL-MURABAHAH

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4. No riba trading shall be involved.
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EVIDENCE

PILLARS

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CONDITION

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CONDITIONS OF PROFIT

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- ★ Reason to the non-specification of amount of profit in trade:
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 - Differences between traders that easily acquire their product from those that can only acquired it through difficult process. Or traders that sell raw product compared to modified product.





APPLICATION

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- ❖ Islamic financial institutions aim to make use of bay al-Murabahah in circumstances where they will purchase raw materials, goods or equipment etc. and sell them to a client at cost, plus a negotiated profit margin to be paid normally by installments.
- ❖ This form of contract is widely used for import finance. So the bank sells a commodity to the client for a predetermined amount or rate of profit over and above the total costs.
- ❖ In Islamic bank, Murabahah is applicable in import transactions in the form of Letter of Credit and for working capital financing for purchase of stock and inventories, spare parts etc.





APPLICATION

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- ◆ Murabahah can be apply in 2 categories:
 - Ordinary Murabahah Sale
 - Involves 2 parties – seller and buyer.
 - The seller is an ordinary trader who buys a commodity without depending on a prior promise of purchase, then he displays it for murabahah sale for a price and a profit to be agreed upon.
 - Murabahah based on Order and Promise
 - Widely applicable because used as one of financing tools by Islamic banks worldwide.
 - Murabahah to the purchase orderer (MPO) for a pre-agreed selling price, which includes a pre-agreed profit mark-up over its cost price, this having been specified in the customer's promise to purchase. The payment is payable within a fixed future date in lump sum or by fixed installments





MURABAHAH WORKING CAPITAL

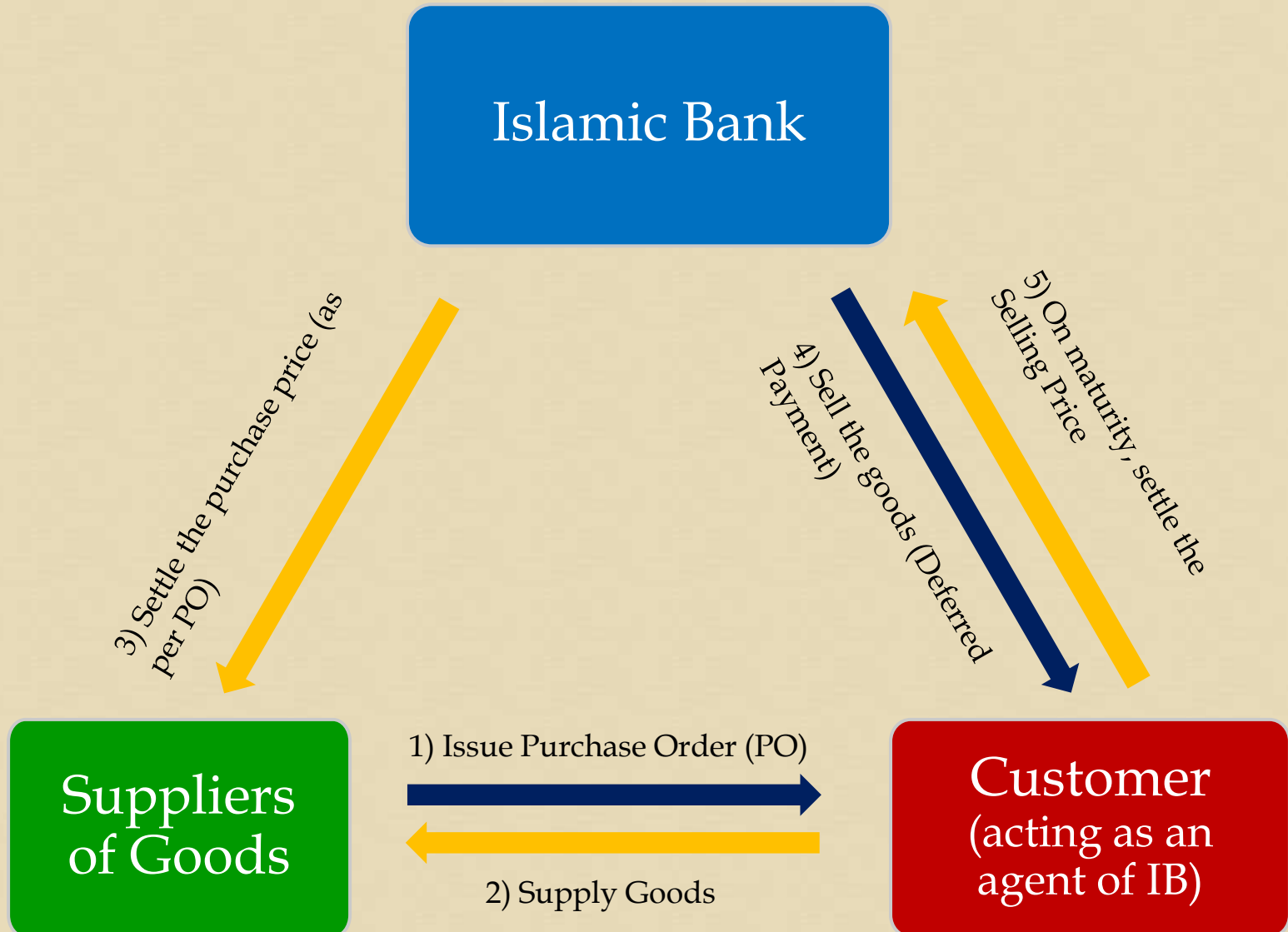
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FIQH MUAMALAT

فقه معاملات

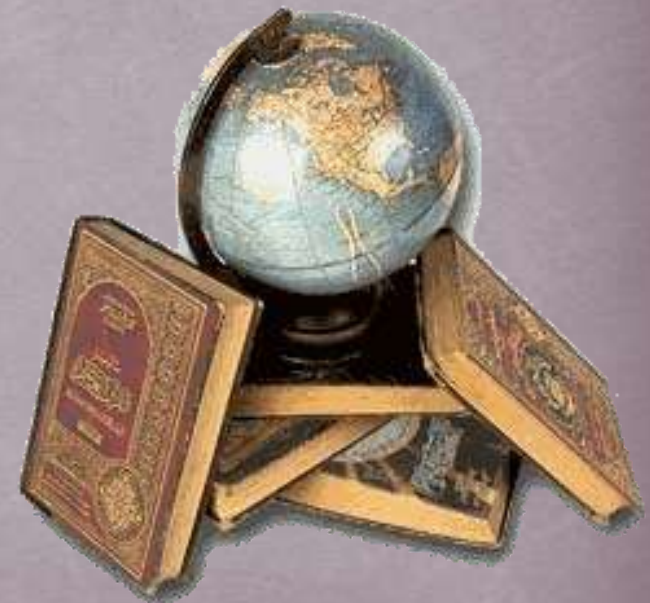


MUDHARABAH

مضاربة



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- ✱ EVIDENCE
- ✱ PILLARS OF MUDHARABAH
- ✱ CATEGORIES OF MUDHARABAH
- ✱ CONDITION OF MUDHARABAH
- ✱ DIFFERENCES BETWEEN MUDHARABAH & MUSHARAKAH





DEFINITION

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✦ Literally:

- ➞ Derived from the phrase “dharaba fi al-ard” which means to make a journey and it is called this because the agent (entrepreneur) gets profit by virtue of his hard work and efforts in performing long journeys.

✦ Technically:

- ➞ A contract or a partnership where one provides the capital and the other the entrepreneurship with the profit being shared among them with a predetermined condition
- ➞ Partnership in profit whereby one party (rabb al-mal) provides capital and the other party (mudharib) provides labor.





NATURE OF MUDHARABAH

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- ✱ The term Mudharabah was widely known in the classical literature as Qiradh and muqharadhah.
- ✱ Both terms derived from the word qarada which means to cut off (al-qat'). This is simply because the capital provider (rabb al-mal) need to cuts off some of his money to be utilized by the mudharib in business activities.
- ✱ Imam Nawawi says: A joint-stock company is called Qiradh or Mudharabah
- ✱ It exists between two persons, one of whom supplies fund to the other to trade with, on condition that the former has a share in the profit.





CHARACTERISTIC OF MUDHARABAH

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1. The profit will be shared between the two parties according to the terms of their agreement
2. The losses will be borne by the capital provider alone who is the financier.
3. The entrepreneur only suffers the frustration of a fruitless effort.





EVIDENCE

❖ Al-Quran:

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❖ عَلِيمٌ أَن سَيَكُونُ مِنْكُمْ مَّرْضَىٰ ۖ وَآخَرُونَ يَضْرِبُونَ فِي الْأَرْضِ يَبْتَغُونَ مِنْ فَضْلِ اللَّهِ ۖ

He knows that there will be some among You sick, others travelling through the land, seeking of Allah's Bounty;

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ ۖ وَادْكُرُوا اللَّهَ كَثِيرًا لَّعَلَّكُمْ

تُفْلِحُونَ ﴿١٠٦﴾

Then when the (Jumu'ah) Salât (prayer) is finished, You may disperse through the land, and seek the Bounty of Allah (by working, etc.), and Remember Allah much, that You may be successful.

- ➡ Although this verses do not directly address the legality of mudharabah, they have been interpreted to include those who travel for the purpose of trading and seeking permissible income.



EVIDENCE

DEFINITION

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SCHOLARS

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✱ Hadith:

- ➔ Reported By Hakim Bin Hizam that he had stipulated to a man that if he gave him certain asset to be utilized for Muqaradah (Mudharabah, Qiradh) , he must not use it to purchase livestock, or carries it (travel) through the sea, or drop by at the oasis, if the man committed any of the above, he is considered to be the guarantor of my property





PILLARS OF MUDHARABAH

DEFINITION

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APPLICATION

1. Sahibul Mal
 - ➔ Owner of capital, fund provider
2. Mudharib
 - ➔ Entrepreneur
3. Ra'sul Mal
 - ➔ Capital
4. Al-Amal or Mashru'
 - ➔ Business Venture or projects
5. Ribh
 - ➔ Predetermined share of profit
6. Sighah
 - ➔ Ijab (Offer)
 - ➔ Qabul (Acceptance)



FLOWS OF MUDHARABAH

DEFINITION

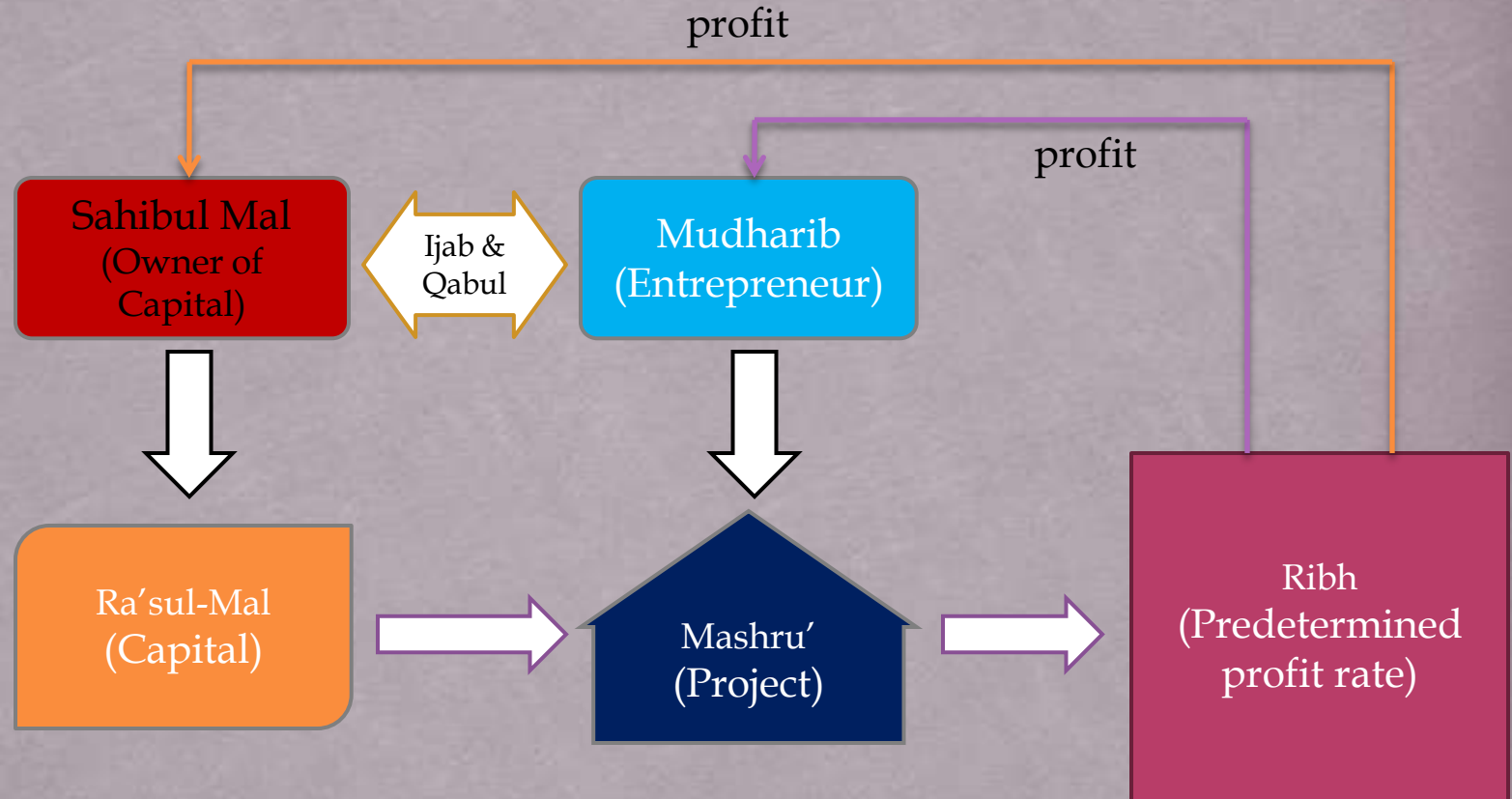
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SCHOLARS

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ROLES OF ENTREPRENEUR (MUDHARIB)

DEFINITION

Ameen
(Trustee)

- The money given by Rab al-mal (investor) and the assets required therewith are held by him as a trust.

EVIDENCES

Wakeel
(Agent)

- In purchasing goods for trade, he is an agent of Rab al-mal.

PILLARS

Sharik
(Partner)

- In case the enterprise earns a profit, he is a partner of Rab al-mal who shares the profit in agreed ratio.

TYPES

Dhamin
(Liable)

- If the enterprise suffers a loss due to his negligence or misconduct, he is liable to compensate the loss.

OPINION OF SCHOLARS

Ajeer
(Employee)

- If the *Mudarabah* becomes Void due to any reason, the *Mudarib* is entitled to get a fee for his services.

APPLICATION





CATEGORIES OF MUDHARABAH

DEFINITION

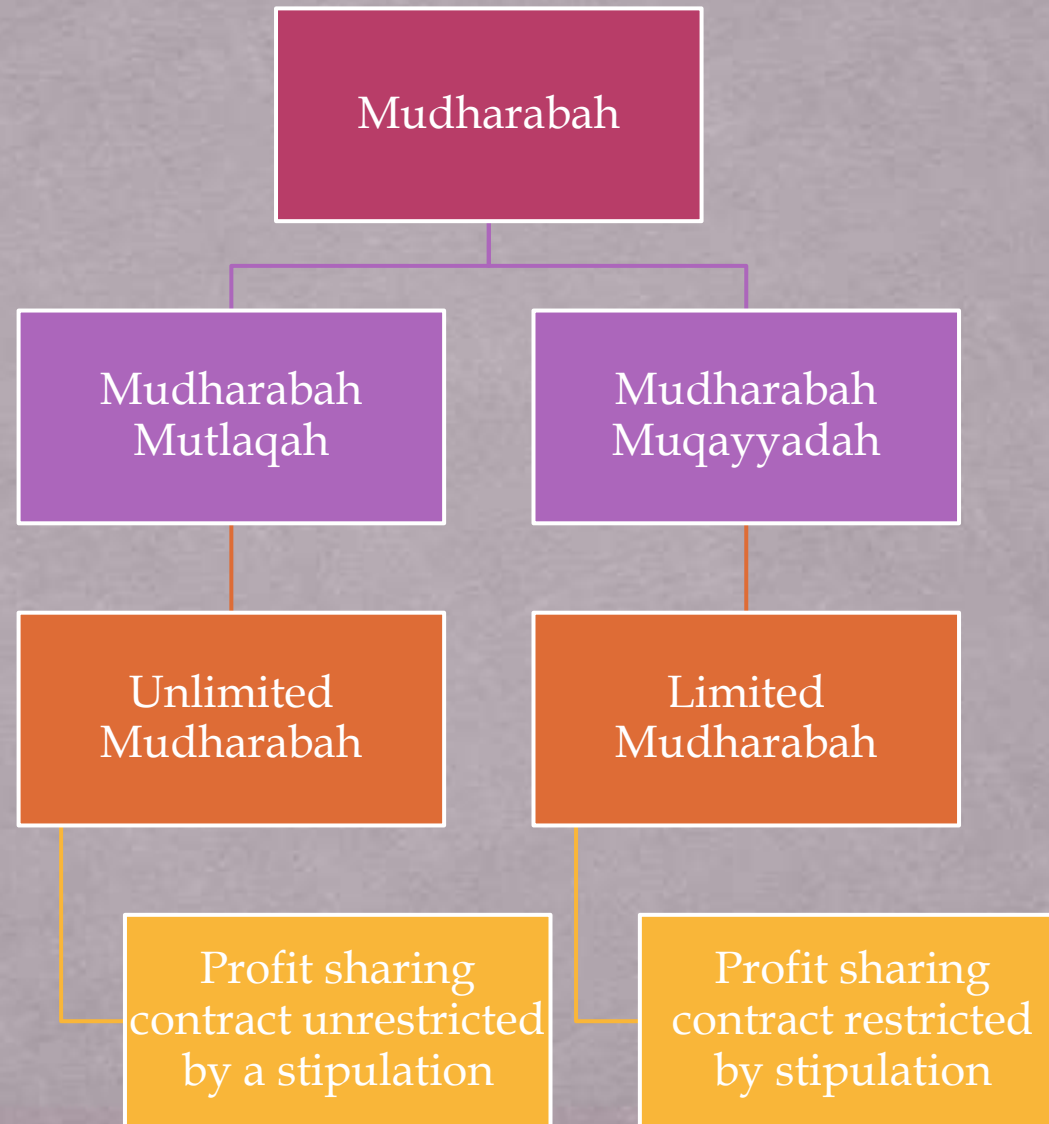
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TYPES

OPINION OF
SCHOLARS

APPLICATION





MUDHARABAH MUTLAQAH

DEFINITION

EVIDENCES

PILLARS

TYPES

OPINION OF SCHOLARS

APPLICATION

- ❖ The entrepreneur (mudharib) may buy and/or sell all types of merchandise as he sees fit, hire helpers as needed, rent equipment and travel with the equipment etc.
- ❖ The business is run according to entrepreneur (mudharib) expertise and experience based on his discretion
- ❖ The capital provider (rabb al-mal) authorizes the entrepreneur (mudharib) to act completely at the latter's discretion in all business matter.
- ❖ Mudharib's liberty to transact the capital:
 - ➡ All matters which are commonly practiced in business - the authorization to transact with the capital is unlimited
 - ➡ All matters which are not commonly practiced in business - free to transact with the capital provided with permission from rabb al-mal. Eg: giving the capital as donations or loans





MUDHARABAH MUQAYYADAH

DEFINITION

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APPLICATION

- ✱ The capital provider (rabb al-mal) makes certain limitations to the activities to be conducted by the entrepreneur (mudharib) with regards to the capital given
- ✱ The business is subject to capital provider's (rabb al-mal) instruction in term of type, location, time etc.
- ✱ Mudharib's liberty to transact the capital:
 - ➞ The mudarib is subjected to certain limitations in the form of territorial limits, or time limitation and limitation in terms of kind of goods or person with whom trade may be conducted





CONDITION OF MUDHARABAH

DEFINITION

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APPLICATION

◆ Conditions of Work/ Subject Matter

1. The work or business venture under Mudharabah must be conducted solely by the entrepreneur (mudharib). It is not legal if the capital provider (rabbulmal) was also required to conduct the daily operation.
2. The project must be legal and permissible(halal)
3. All the expenses will be taken from the capital provided that is not more than the justified expenses required in the venture





CONDITION OF MUDHARABAH

DEFINITION

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APPLICATION

◆ Conditions of Capital

1. Must be in the form of money and not commodities since commodities fluctuate in price and cause uncertainty and ignorance
2. The capital must be clearly specified, determined and known at the time of the contract
3. Must be available cash-present during the conclusion of contract
4. Must be delivered to the possession of the mudharib entirely





CONDITION OF MUDHARABAH

DEFINITION

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APPLICATION

◆ Conditions Of Profit

1. The distribution of profit must be determined proportionally between the capital provider and the entrepreneur
2. The pre-determined profit must be in ratio form or percentage and not in fixed amount
3. Allowed to be different ratios at different situations





ISSUES IN PROFIT

DEFINITION

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OPINION OF SCHOLARS

APPLICATION

- ✱ There cannot be a distribution of profits until the losses have been written off and the equity of rab al-mal has been fully restored
- ✱ Any distribution of profits before the conclusion of the contract will be considered as an advance
- ✱ All losses incurred in the ordinary course of business must be charged against profits before they can be charged against the equity of rab al-mal
- ✱ If it has been agreed that the entire profit will be taken by the rab al-mal – the mudarib will be entitled to the customary remuneration ('ujr al-mithly)
- ✱ If it has been agreed that the entire profit will be taken by the mudarib – the rab al-mal is a creditor and mudarib is a debtor
- ✱ The mudarib cannot claim any periodical salary / fee or remuneration for the work done by him for the mudharabah





TERMINATION OF MUDHARABAH CONTRACT

DEFINITION

EVIDENCES

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SCHOLARS

APPLICATION

- ✱ Unilateral termination
- ✱ On the date of maturity if the two parties had earlier agreed to set the time limit
- ✱ When the fund of mudharabah has been exhausted or have suffered losses
- ✱ The death of the mudharib or liquidation of institution that acts as mudharib
- ✱ Insanity of any parties to the mudharabah contract





DIFFERENCE BETWEEN MUDHARABAH AND MUSHARAKAH

DEFINITION

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APPLICATION

MUDHARABAH	MUSHARAKAH
The capital is financed by one party, which is the capital provider or the owner of the business	The capital is financed by all the shareholders according to the proportion agreed upon by all parties
The capital must be in the form of cash money	Any type of property that could normally be assessed and have certain commercial value could be considered as an acceptable source of capital. Example; intellectual capital
The entrepreneur will be the only one that will conduct the actual business. The capital provider is not allowed to jointly work with the entrepreneur.	All the shareholders have the right to work and contribute their skills, knowledge, experience and expertise in the company
The monetary loss will be solely borne by the capital provider while the entrepreneur will only suffer from a fruitless effort without having to bear all the capital losses	The monetary loss will be jointly borne by all the shareholders according to the ratio and proportion of their respective share in the partnership





MODERN APPLICATION

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- ✿ Project financing
- ✿ Import/export financing
- ✿ Working capital financing
- ✿ Saving/Current/Investment account
- ✿ Interbank lending/borrowing
- ✿ Sukuk





END OF CHAPTER

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APPLICATION



FIQH MUAMALAT

فقه معاملات



MUSHARAKAH

مشاركة



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❖ CONDITION OF MUSHARAKAH

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❖ MODERN APPLICATION

CONDITIONS

APPLICATION





DEFINITION

DEFINITION

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❖ Musharakah is also known as al-sharikah (الشراكة)

❖ Literally:

➞ Intermingling of properties whereby one cannot be differentiated from the other

➞ Mixing of two properties so that they could not be distinguished from each other

❖ Technically:

➞ An agreement between two or more parties to combine their assets, labor or liabilities for the purpose of making a profit.





NATURE OF MUSHARAKAH

DEFINITION

- ✱ It is basically a profit and loss sharing partnership whereby the ratio for the distribution of profits must be determined and specified in advance

EVIDENCES

- ✱ If one partner is to be paid a fixed remuneration he will not be deemed a partner

PILLARS

- ✱ Each partner may dissolve the partnership at his/her pleasure provided he gives ample notice for the others.

TYPES

CONDITIONS

APPLICATION





EVIDENCE

✱ Al-Qur'an:

DEFINITION

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APPLICATION

فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ

But if they are more than two, they share a third (an-Nisa:12)

وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَى بَعْضٍ
إِلَّا الَّذِينَ ءَامَنُوا وَعَمِلُوا الصَّالِحَاتِ وَقَلِيلٌ مَّا هُمْ

Many partners oppress one another, except those who believe and do righteous deeds, and very few they are.





EVIDENCE

DEFINITION

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✿ Hadith:

- ➞ Reported by Abi Hurairah R.A that the Prophet S.A.W said “Allah had said that: “I am the third of the partners, as long as any one of them does not betray the other. If he/she does betray the other, I will withdraw (move away) from them”
- ➞ Reported by As-Saib Al-Makhzumi R.A that he used to be a partner of the prophet S.A.W (in business) before his prophet-hood. During the opening of Mecca he said to the prophet S.A.W: “Welcome my brother and partner!”





PILLARS OF MUSHARAKAH

DEFINITION

1. Shuraka'

➔ Shareholders

EVIDENCES

2. Ra'sul Mal

➔ Capital

PILLARS

3. Mashru'

➔ Project or business venture

TYPES

4. Ribh

➔ Pre-determined profit allocation

CONDITIONS

5. Sighah

➔ Ijab (Offer)

➔ Qabul (Acceptance)

APPLICATION





FLOWS OF MUSHARAKAH

DEFINITION

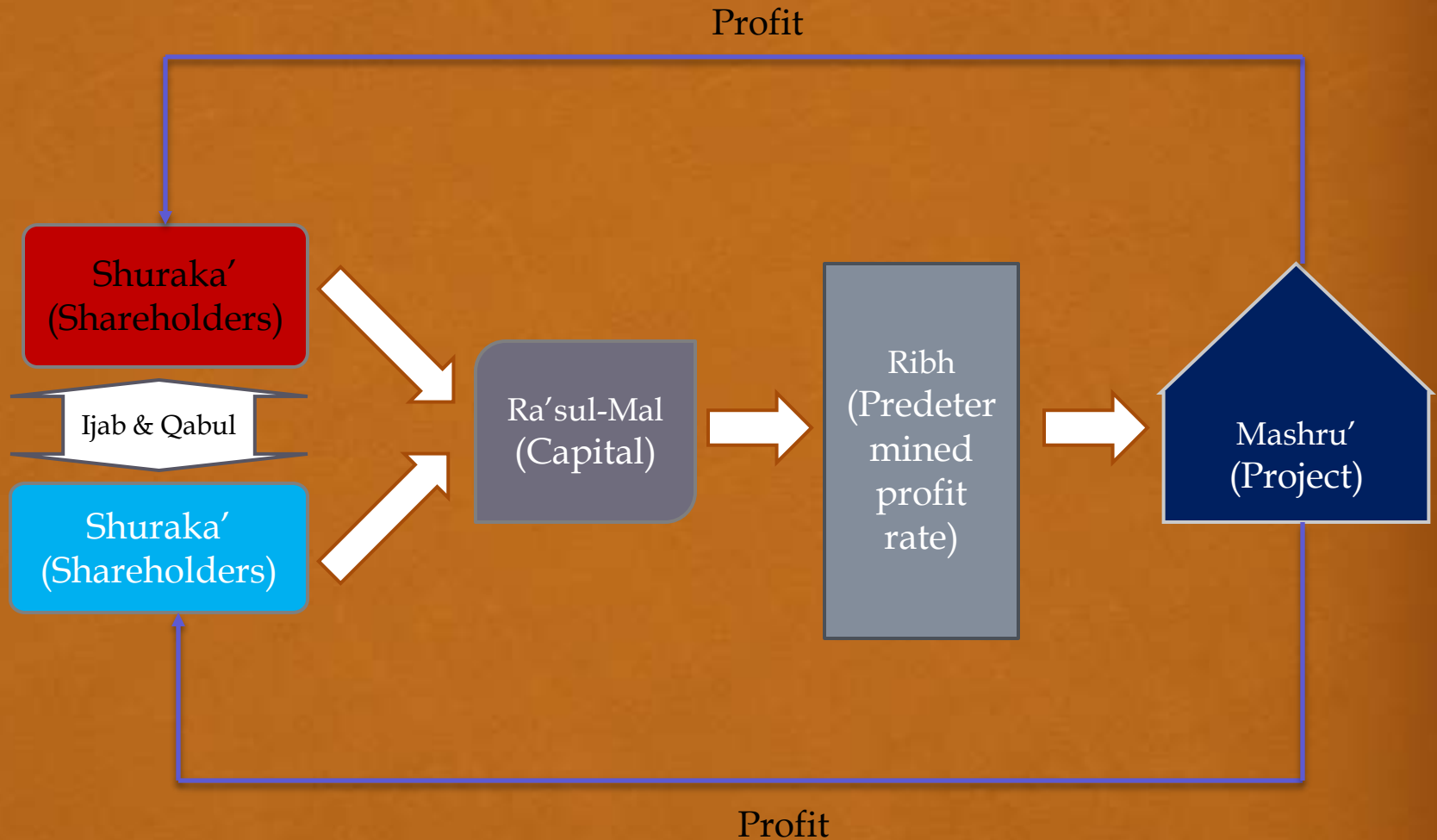
EVIDENCES

PILLARS

TYPES

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TYPES OF MUSHARAKAH

DEFINITION

EVIDENCES

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TYPES

CONDITIONS

APPLICATION

Musharakah

Sharikah al-Milk
(ownership partnership)

Sharikah Ikhtiar

Sharikah Jabr

Sharikah al-'Aqd
(contractual partnership)

Sharikah al-Amwal
(capital)

Sharikah al-A'mal
(labour)

Sharikah al-Wujuh
(goodwill/ credit)

Sharikah al-Mudharabah
(profit-sharing)

Sharikah al-Mufawadhah
(equal share)

Sharikah al-'Inan
(general)



TYPES OF MUSHARAKAH

DEFINITION

SYIRKAH AL MILK

- Joint ownership of two or more persons in a particular property
 - Optional ownership – based on own option
 - Compulsory ownership – automatically exists

EVIDENCES

PILLARS

TYPES

SYIRKAH AL 'UQUD

- A partnership effected by a mutual contract or a joint commercial enterprise
 - Partnership in capital
 - Partnership in labour
 - Partnership in goodwill/credit
 - Profit sharing partnership

CONDITIONS

APPLICATION





TYPES OF MUSHARAKAH

DEFINITION

Sharikat al-Inan

- A partnership of two or more to contribute the capital to finance a project and to share the profit between them.

EVIDENCES

Sharikat al-Mufawadah

- An equal partnership between two or more, where each contributes the same amount of capital and to share the same amount of profit and work.

PILLARS

Sharikat al-A'mal

- A partnership of two or more to contribute their skill or craft.

TYPES

Sharikat al-Wujuh

- A partnership of two or more without contributing capital.

CONDITIONS

APPLICATION





SHARIKAH AL-‘INAN

DEFINITION

EVIDENCES

PILLARS

TYPES

CONDITIONS

APPLICATION

- ✿ It is a partnership where two or more parties share the capital and the profit.
- ✿ In this type of partnership, equality in the capital, management, or in the distribution of profit is not a condition.
- ✿ One of the partners may contribute more to the capital than the others.
- ✿ It is also allowed that one or more of the partners may manage the partnership while the rest may not participate.
- ✿ Partners are considered agents for each other whereby an action done by one of them in the ordinary course of business binds other partners. However, partners are not guarantors for each other.
- ✿ It is the most important form of partnership and close to the modern concept of business partnership





SHARIKAH AL-MUFAWADHA

DEFINITION

EVIDENCES

PILLARS

TYPES

CONDITIONS

APPLICATION

- ✱ Al-Mufawadha literally means equality or delegation.
- ✱ Technically it refers to a partnership where two or more persons become partners in a venture on the condition to equally contribute to the capital and management.
- ✱ In this partnership all parties equally contribute to the capital and management. They also equally share profit or losses.
- ✱ Each partner is an agent as well as a surety or a guarantor for the other partners.
- ✱ A partner is liable for the actions of other partners. An undertaking by one of the partner binds all other partners provided it has been made in the ordinary course of business.





SHARIKAH AL-A'MAL

DEFINITION

- ✿ It refers to a type of partnership where two or more partners agree to work in partnership and share their earnings.

EVIDENCES

- ✿ This partnership has no monetary capital

PILLARS

- ✿ All partners jointly undertake to render some services for their customers, and the fee charged from them is distributed among the partners according to an agreed ratio.

TYPES

- ✿ For e.g. if two tailors agree to undertake joint services for their customers on the condition that the wages earned will go to a joint pool which shall be distributed between them irrespective of the volume of the work each partner has actually done.

CONDITIONS

APPLICATION





SHARIKAH AL-WUJUH

DEFINITION

EVIDENCES

PILLARS

TYPES

CONDITIONS

APPLICATION

- ✱ Wujuh refers to goodwill, creditworthiness, and good reputation.
- ✱ Bilateral agreement between two or more parties to conclude a partnership to buy asset on credit on the basis of their reputation for the purpose of making profit.
- ✱ Both parties do not contribute any capital. They purchase commodities at a deferred price and sell them for cash.
- ✱ The parties should determine the percentage of profit-sharing and of liability sharing.
- ✱ This form of partnership has no monetary capital.
- ✱ In this case the profit will be distributed based on their shares in the goods bought. The same would apply to losses. They may also distribute the profit among them based on an agreed ratio.





CONDITIONS OF MUSHARAKAH

DEFINITION

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APPLICATION

❖ The Conditions Of Shareholders And Partners

1. The shareholders and partners must be qualified person to appoint an agent or to be appointed as an agent under the principle of al-Wakalah. Each shareholder is considered as a joint owner of the company and has a right to run the business for him and other shareholders when appointed as an agent.
2. Al-Musyarakah i.e. partnership and company based business can be made between individuals or organizations.





CONDITIONS OF MUSHARAKAH

DEFINITION

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CONDITIONS

APPLICATION

◆ The Conditions Of Capital

1. The capital must be cash or things that can be valued by money.
2. The capital must be pooled together and are not segregated so that it cannot be identified the owner of actual share.
3. The amount of share is not determined to be of the same.
4. The shareholder can transfer his share to other person.
5. The contract of al-Musharakah can be terminated to become a contract of ownership. As for example, a Bank has agreed to finance to project together with a housing developer. At the time when the project has completed, the bank can sell his share to the developer so that it will become a sole owner of the property.





CONDITIONS OF MUSHARAKAH

DEFINITION

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APPLICATION

❖ The Conditions Of The Project

- ➡ The project must be lawful according to Islamic law, i.e. it must be halal. The term “shariah compliance” is widely used in current situations.
- ➡ The evaluation for works carried out by the partners is made on individual basis, but to be putted together so that the profit can be divided among them.
- ➡ The shareholder can designate the work to one of them and it can be considered as a specified term or condition of the contract.
- ➡ The appointed shareholder who carried out the project is held responsible under the principle of Yad Amanah (trust). In the case of his negligence he is held responsible for compensation under the principle of Yad Dhamanah (guarantee).





CONDITIONS OF MUSHARAKAH

DEFINITION

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❖ The Conditions Of Profit

1. The ratio of profit sharing between all parties should be determined and mutually agreed at the conclusion of the contract in the form of percentage of profit, not a sum of money or percentage of capital. This is very important to avoid any element of gharar.
2. Loss sharing, except in the case of deceit or negligence, is according to percentage of shareholding.





DISSOLUTION OF MUSHARAKAH

DEFINITION

EVIDENCES

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TYPES

CONDITIONS

APPLICATION

1. When a partnership fulfills its obligation or when its duration is expired.
2. By mutual consent of the parties.
3. By a request made by one of the parties which is subsequently approved by other parties.
4. By death or incapacity of one of the parties whose heirs or their guardian decide to discontinue the partnership.
5. The bankruptcy of the partners.





MUSHARAKAH MUTANAQISAH

DEFINITION

❖ Definition:

- ➔ Form of partnership in which one of the partners promises (wa'd) to buy the equity share of other partner gradually until the title of the equity is completely transferred to him.

EVIDENCES

PILLARS

TYPES

- ❖ A form of Musharakah where the financier and the client participate in a joint commercial enterprise or property. This enterprise is converted into undivided ownership of both the financier and the client. Over certain period the equity of financier, divided into equal value units, is purchased by the client. And ultimately the client becomes the sole owner of the enterprise

CONDITIONS

❖ Application of Musharakah Mutanaqisah:

- ➔ Home financing
- ➔ Agriculture Machinery and implements financing
- ➔ Storage facility construction/sheds
- ➔ Transport vehicles, etc.

APPLICATION





MODERN APPLICATION

DEFINITION

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CONDITIONS

APPLICATION

- ✿ Project financing
- ✿ Import/export financing
- ✿ Working capital financing
- ✿ Saving/Current/Investment account
- ✿ Interbank lending/borrowing
- ✿ Securitization
- ✿ Sukuk Musyarakah





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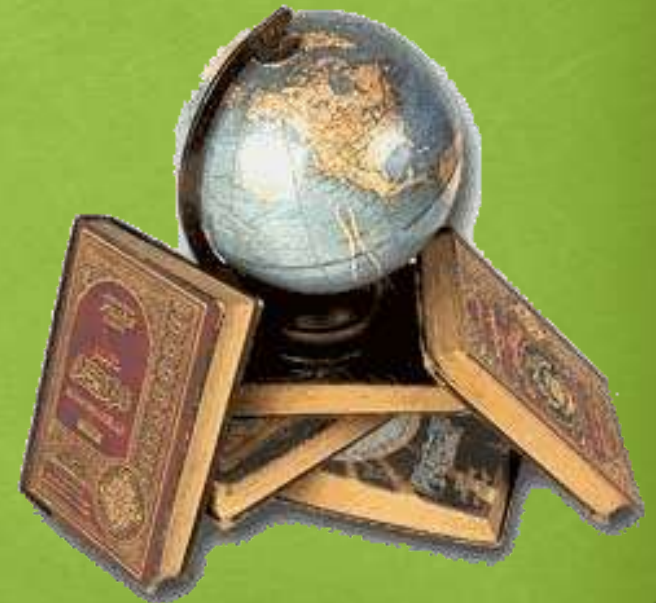
FIQH MUAMALAT فقه معاملات



AL-BAY' BITHAMAN AAJIL البيع بثمن آجل



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✿ PRICING FOR BBA

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✿ CONDITION OF BBA

✿ APPLICATION OF BBA

CONDITION

APPLICATION





INTRODUCTION

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- ✱ The most popular type of financing
- ✱ Reference in many classical fiqh books shows that sale with deferred kind of payment is also known as:
 - ➞ Bay' al-Taqsit: Sale with installment payment
 - ➞ Bay' al-Muajjal: Sale with deferred payment. sale. The Majallah (mainly Hanafi-bases codification) refers to BBA as Bay' al-Muajjal. This term is employed in Pakistan and Bangladesh.
 - ➞ Bay' al-Nasiah: Sale with delayed payment
 - ➞ Bay' al-Aajil: Deferred sale
- ✱ In the Middle East, a similar practice is used under the term Murabahah. However, in Malaysia both terms refer to two different products.



DEFINITION

DEFINITION

EVIDENCES

PILLARS

PRICING

CONDITION

APPLICATION

- ◆ Literally:
 - ➔ Deferred payment sale.
- ◆ Technically:
 - ➔ Sale contract in which the payment of the price is deferred and payable at a certain particular time in the future.
- ◆ It is a contract whereby the commodity is delivered immediately and the price is paid by installments.
- ◆ The payment is delayed to a fixed and stipulated period of time. The selling price includes the cost price plus an agreed profit margin which will increase depending on the length of period over which the deferment is agreed upon.





NATURE OF BBA

DEFINITION

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CONDITION

APPLICATION

- ✦ BBA is essentially to sell something with a prompt delivery of sold items to the purchaser while the payment is postponed until a specified date in the future or through installment (taqsit)
- ✦ Therefore, BBA can be implicated for other sale contracts including bay' Musawamah and bay' al-Murabahah. (not applicable for salam contract)
- ✦ According to some writers BBA occurs when the payment of bay' al-Murabahah is deferred to a certain date agreed upon by the parties. It is also possible to say that while in bay' al-Murabahah, the original cost is disclosed it may not be necessary under BBA.
- ✦ In the Malaysian context the selling price both in bay' al-Murabahah and BBA is based on the cost price. However, Murabahah is used for short-term transactions while BBA is used for longer term transactions.



EVIDENCE

DEFINITION

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- ✱ In general, no issue arises from the practice of deferring the payment of sale price.
- ✱ It is reported in a Hadith by a Companion, Jabir, that the Prophet (s.a.w) bought a camel from him outside the city of Madinah whereby the payment was settled later on in Madinah.
- ✱ In another Hadith, it was narrated by Aisha r.a that the prophet s.a.w bought a meal from one Yahudi with deferred payment, and he mortgaged his iron shirt which is made from iron.





PILLARS OF BBA

DEFINITION

❖ Seller

❖ Buyer

EVIDENCES

❖ Asset/goods

PILLARS

❖ Price

PRICING

❖ Sighah

CONDITION

APPLICATION





FLOWS OF BBA

DEFINITION

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CONDITION

APPLICATION

- ✱ The Bank may finance the customers who wish to acquire a given asset but to defer the payment for the asset for a specific period or to pay by installments under the principle of Al- Bai' Bithaman Ajil.
- ✱ The bank first determines the requirements of the customer in relation to his period and manner of repayment.
- ✱ The bank purchases the asset concerned.
- ✱ The Bank subsequently sells the relevant asset to the customer at an agreed price which comprises:
 - The actual cost of the asset to the bank; and
 - The Bank's margin or profit and allows the customer to settle the payment by installments within the period and in the manner so agreed



TIME VALUE OF MONEY IN BBA

DEFINITION

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APPLICATION

- ❖ Question arises from the practice of increasing the price due to deferment.
- ❖ The hadith did not specifically mention whether such increment is allowed on the basis of its deferment.
- ❖ According to majority jurists inc. Al-Kasani, Ibn 'Abidin, Ibn Rushd and Al-Nawawi increasing the price due to the deferment in the payment is permissible because the increase is against the commodity and not against the money.
- ❖ It's permissibility is based on legal proof nass and by the testimony of the jurist by consensus. Jurist said that the benefit gained in the salam sale transaction is the cheaper price on part of the customer and immediate payment on part of the vendor.



OBJECTIVE OF BBA

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APPLICATION

1. To provide financing for potential buyers who could not afford to pay cash in advance and enable them to perform daily responsibilities and obligations without any financial hardship or difficulties
2. To facilitate and support the smooth flow of transaction in the business society by providing flexible modes of payment especially through credit payment.





PRICING FOR BBA

DEFINITION

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- ❖ One of the most effective strategy to attract potential clients is the trader would offer flexibility on how the client could settle the payment of their purchase.
- ❖ Instead of paying cash, they could purchase it on credit basis with the payment made in the future either through installment or lump sum
- ❖ Common practice for BBA to set higher pricing for product purchased through deferred payment or installment compared to cash payment
- ❖ Meant to compensate traders who are willing to wait little bit longer before they could regain their money back. If they receive payment in advance, they could use it for other purpose such reinvest.





PRICING FOR BBA

DEFINITION

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APPLICATION

SALAM PRICING	NORMAL PRICING	BBA PRICING
At a discount – cheaper than normal pricing	Market rate – based on the ability to pay cash	Higher than normal and Salam pricing

- ◆ Strategy for flexible pricing has advantages for seller and buyer:
 - ➔ Traders would be able to attract potential customer by offering some credit assistance for buyers who are not capable to pay in full and hence increase their sales.
 - ➔ By offering higher price for credit purchase, it is indirect strategy to encourage buyers to pay cash instead delaying. It is not penalty to penalize those who cannot pay in full. It just considered as justified compensation for traders who are willing to forego direct payment in return for slightly higher return.





ISSUES OF BBA'S DIFFERENT PRICING

DEFINITION

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PRICING

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APPLICATION

- ❖ Few minority scholars against sale of product with deferred payment at higher price than daily price on the basis that it is actually part of *riba nasiah* that being prohibited in Islam
- ❖ *Majma' Fiqh Islami* concluded that *Bay' Taqsit* (installment) is permissible in Shariah.
- ❖ Majority scholars allowed different pricing for both normal sale and BBA. This permissibility is based on several reason:
 1. Scholars such as Ibn Qayyim stated that it permissible since element that prohibited (*riba*, uncertainty(*gharar*), gambling(*maysir*) and ignorance) does not exist in the transaction
 2. There are no single evidence that prohibits this type of pricing.
 3. The counter-values (cash versus product) differ from each other compared to *ribawi* transaction especially *ribawi* debt where the counter values are exactly the same (cash versus cash)





CONDITIONS OF BBA

DEFINITION

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PRICING

CONDITION

APPLICATION

- ❖ BBA is permitted in Islam only for non-ribawi commodities
 - ➔ For ribawi commodities of different category and type since the exchange of items must be conducted according to the principle of spot transactions and within the same contract session. Any delay in the exchange will transform this dealing to prohibited transaction.
- ❖ Majority of jurist stated that duration of contract must be clearly stated in a precise manner whether using Islamic calendar or any foreign calendar provided it is reliable.
- ❖ The payment of BBA could be made in several form:
 1. Installment spread over a certain period
 2. One lump sum in the future
 3. Combination of both provided it clearly stated in the contract and both parties agreed with term and condition in the contract.





DIFFERENCES BETWEEN BBA AND BAY' AL-MURABAHAAH

DEFINITION

EVIDENCES

PILLARS

PRICING

CONDITION

APPLICATION

- ✱ In classical Islamic law, there is no differences between BBA and bay' al-murabahah. They simply mean deferred payment sale at a mark-up.
- ✱ In Islamic bank practice, they confined BBA to medium and long-term asset financing and murabahah to short term financing.
- ✱ Murabahah is a trust transaction; it require more strict condition compared to other type of transaction like BBA.
- ✱ Murabahah refers to capital disclosure and the mark up price, while BBA refers to the method of payment, which is on deferment





APPLICATION

DEFINITION

EVIDENCES

PILLARS

PRICING

CONDITION

APPLICATION

- ✿ In Malaysia, BBA financing is employed by bank to provide medium to long term financing to clients for acquiring e.g.. Property, land, motor vehicle, consumer goods, shares, overdraft facility, education financing package etc.
- ✿ Home financing is the most popular facility granted under the concept of Bai Bithaman Ajil (BBA) either to purchase existing completed houses, build or construct new house on customer's land even as a refinancing facility.
- ✿ In BBA, the customer sells the property purchased to the bank for a cash sum paid to the customer and the property will then be immediately resold back by the bank to the customer at higher price which include the bank's profit on the sale, payable by the customer to the bank by monthly installments over a fixed period of time.





MODERN APPLICATION

DEFINITION

EVIDENCES

PILLARS

PRICING

CONDITION

APPLICATION

✱ Basically, BBA financing is employed by the bank to provide medium to long term financing to the clients who intend to acquire the following items:

- ➞ Houses / shop houses
- ➞ Land
- ➞ Motor vehicle
- ➞ Consumer goods
- ➞ Shares
- ➞ Overdraft facility
- ➞ Education financing package
- ➞ Personal financing
- ➞ Other suitable and acceptable goods





BBA ASSET FINANCING

DEFINITION

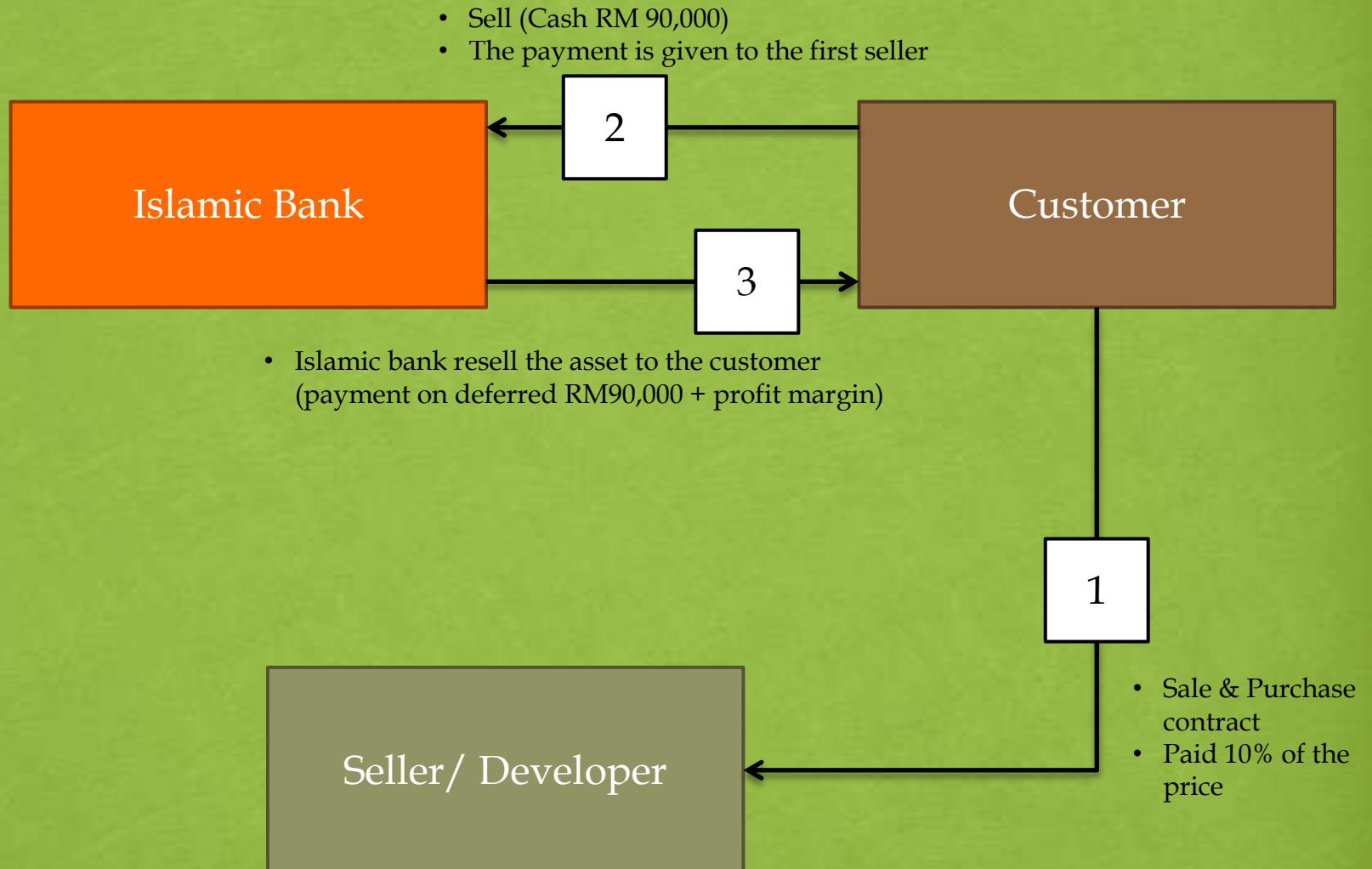
EVIDENCES

PILLARS

PRICING

CONDITION

APPLICATION





SUKUK BBA ISSUANCE

DEFINITION

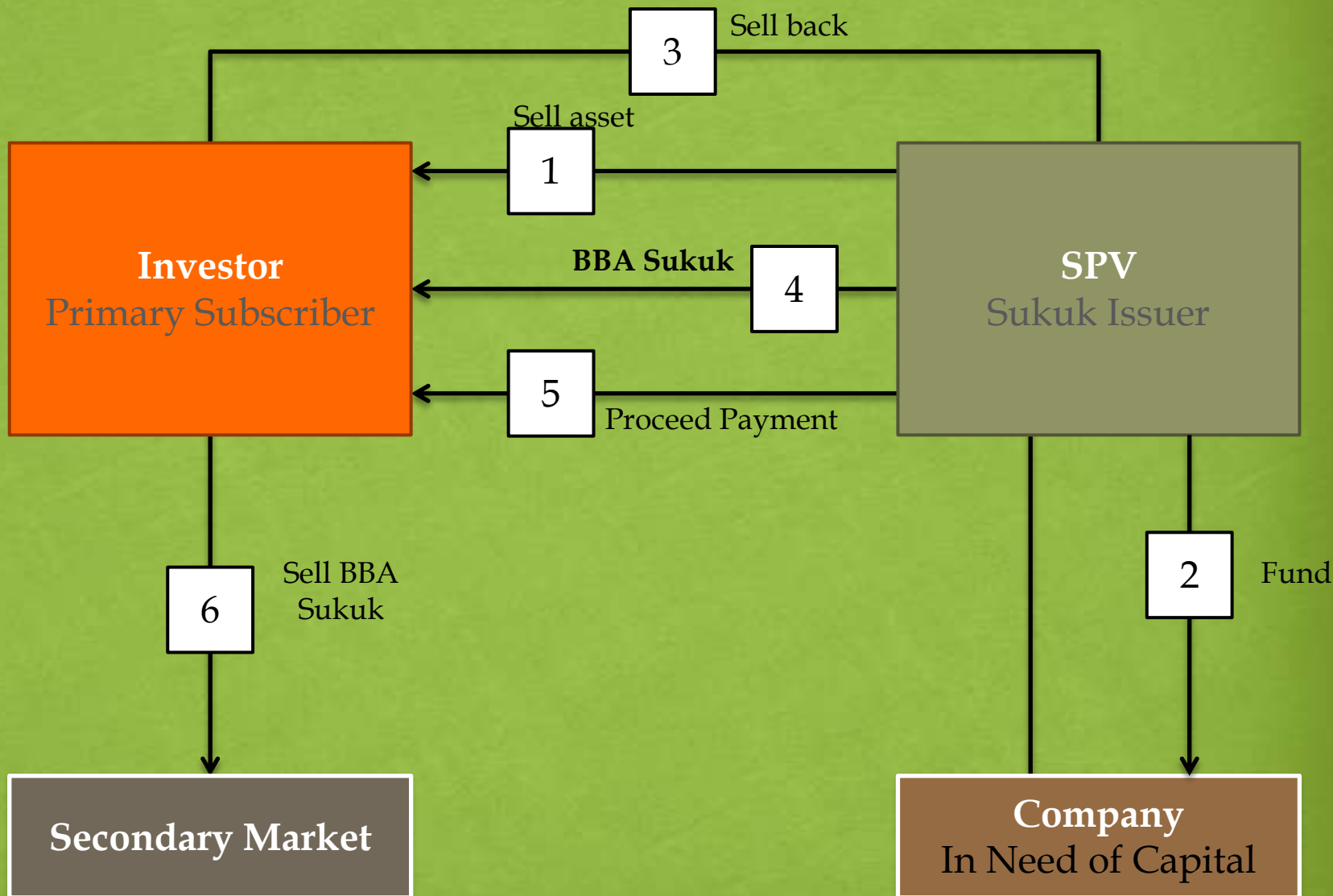
EVIDENCES

PILLARS

PRICING

CONDITION

APPLICATION





ISSUES RELATED TO BBA

DEFINITION

EVIDENCES

PILLARS

PRICING

CONDITION

APPLICATION

The ownership of the Asset

- The matter of legal and beneficial ownership of the asset before it is being sold back to the customer.
- The Malaysian Shariah Advisory Council have given flexibility on the registration of legal title because it is regarded as a formality and procedural requirement.
- Therefore, according to Shariah, although the legal title of the asset has not been processed at the Land Office, the asset can be rented or sold because Shariah only refers to the contract and the possession of the asset, not the legal registration of the title.

The auction of asset by bank in claiming the balance

- The matter of whether the bank can auction their customer's asset which is financed by BBA and if the auction price is insufficient to cover the customer's arrears to the bank.
- If customer unable to pay back their debt, the bank is authorized to foreclose the house or asset to recover the debt that is deferred and overdue.
- From Islamic perspectives, the collateral is supposed to cover the debt. If it does not, the bank has the right to claim the balance of the debt from the customer.



END OF CHAPTER

DEFINITION

EVIDENCES

PILLARS

PRICING

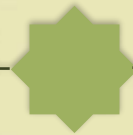
CONDITION

APPLICATION



FIQH MUAMALAH

ISLAMIC BUSINESS TRANSACTION



CHAPTER NINE

BAY' BI-THAMAN AJIL



CONTENT

DEFINITION

◆ INTRODUCTION

◆ DEFINITION

◆ EVIDENCE

EVIDENCE

◆ OBJECTIVE OF BBA

◆ PRICING FOR BBA

OBJECTIVE

◆ CONDITION OF BBA

PRICING

◆ APPLICATION OF BBA

CONDITION

APPLICATION





INTRODUCTION

DEFINITION

- ✦ The most popular type of financing
- ✦ The Majallah (mainly Hanafi-bases codification) refers to BBA as Bay' al-Muajjal. This term is employed in Pakistan.
- ✦ In Bangladesh, it is known as Bay' Muazzal.
- ✦ In the Middle East, a similar practice is used under the term Murabahah.
- ✦ Bay' Bi-thaman Ajil (BBA) or deferred payment sale also called Bay a;-Taqsit (Sale with Installment) or Bay' al-Muajjal (Deffered Payment Sale).
- ✦ However, in Malaysia both terms refer to two different products.

EVIDENCE

OBJECTIVE

PRICING

CONDITION

APPLICATION





DEFINITION

DEFINITION

- ◆ BBA is defined as an instalment sale.
- ◆ BBA is a sale contract in which the payment of the price is deferred and payable at a certain particular time in the future.
- ◆ It is a contract whereby the commodity is delivered immediately and the price is paid by instalments.
- ◆ The payment is delayed to a fixed and stipulated period of time. The selling price includes the cost price plus an agreed profit margin which will increase depending on the length of period over which the deferment is agreed upon.

EVIDENCE

OBJECTIVE

PRICING

CONDITION

APPLICATION





DEFINITION

DEFINITION

EVIDENCE

OBJECTIVE

PRICING

CONDITION

APPLICATION

- ✦ BBA is essentially to sell something with a prompt delivery of sold items to the purchaser while the payment is postponed until a specified date in the future or through installment (taqsit)
- ✦ Therefore, BBA can be implicated for other sale contracts including Musawamah and Murabahah. (not applicable for salam contract)
- ✦ According to some writers BBA occurs when the payment of Murabahah is deferred to a certain date agreed upon by the parties. It is also possible to say that while in Murabahah the original cost is disclosed it may not be necessary under BBA. In the Malaysian context the selling price both in Murabahah and BBA is based on the cost price. However, Murabahah is used for short-term transactions while BBA is used for longer term transactions.





EVIDENCE

DEFINITION

- ✦ In general, no issue arises from the practice of deferring the payment of sale price.

EVIDENCE

- ✦ It is reported in a Hadith by a Companion, Jabir, that the Prophet (s.a.w) bought a camel from him outside the city of Madinah whereby the payment was settled later on in Madinah.

OBJECTIVE

- ✦ In another Hadith, it was narrated that the Prophet (pbuh) purchased a quantity of grain from a Jew on the basis of deferred payment and he pledged his armour by way of security.

PRICING

- ✦ The dispute arises from the practice of increasing the price due to deferrment.

CONDITION

- ✦ According to majority jurists inc. Al-Kasani, Ibn 'Abidin, Ibn Rushd and Al-Nawawi increasing the price due to the deferment in the payment is permissible because the increase is against the commodity and not against the money.

APPLICATION





OBJECTIVE OF BAY' BI THAMAN AJIL

DEFINITION

EVIDENCE

OBJECTIVE

PRICING

CONDITION

APPLICATION

1. To provide financing for potential buyers who could not afford to pay cash in advance and enable them to perform daily responsibilities and obligations without any financial hardship or difficulties
2. To facilitate and support the smooth flow of transaction in the business society by providing flexible modes of payment especially through credit payment.





PRICING FOR BAY' BI THAMAN AJIL

DEFINITION

- One of the most effective strategy to attract potential clients is the trader would offer flexibility on how the client could settle the payment of their purchase.

EVIDENCE

- Instead of paying cash, they could purchase it on credit basis with the payment made in the future either through installment or lump sum

OBJECTIVE

- Common practice for BBA to set higher pricing for product purchased through deferred payment or installment compared to cash payment

PRICING

- Meant to compensate traders who are willing to wait little bit longer before they could regain their money back. If they receive payment in advance, they could use it for other purpose such reinvest.

CONDITION

APPLICATION





PRICING FOR BAY' BI THAMAN AJIL

DEFINITION

EVIDENCE

OBJECTIVE

PRICING

CONDITION

APPLICATION

SALAM PRICING	NORMAL PRICING	BBA PRICING
At a discount – cheaper than normal pricing	Market rate – based on the ability to pay cash	Higher than normal and Salam pricing

- ✦ Strategy for flexible pricing has advantages for seller and buyer:
 - ➔ Traders would be able to attract potential customer by offering some credit assistance for buyers who are not capable to pay in full and hence increase their sales.
 - ➔ By offering higher price for credit purchase, it is indirect strategy to encourage buyers to pay cash instead delaying. It is not penalty to penalize those who cannot pay in full. It just considered as justified compensation for traders who are willing to forego direct payment in return for slightly higher return.





ISSUES OF BBA'S DIFFERENT PRICING

DEFINITION

- ✱ Few minority scholars against sale of product with deferred payment at higher price than daily price on the basis that it is actually part of riba nasiah that being prohibited in Islam

EVIDENCE

- ✱ Majma' Fiqh Islami concluded that Bay' Taqsit (instalment) is permissible in syariah.

OBJECTIVE

- ✱ Majority scholars allowed different pricing for both normal sale and BBA. This permissibility is based on several reason:

PRICING

1. Scholars such as Ibn Qayyim stated that it permissible since element that prohibited (riba, uncertainty(gharar), gambling(maysir) and ignorance) does not exist in the transaction

CONDITION

2. There are no single evidence that prohibits this type of pricing.

APPLICATION

3. The counter-values (cash versus product) differ from each other compared to ribawi transaction especially ribawi debt where the counter values are exactly the same (cash versus cash)





CONDITIONS OF BAY' BI-THAMAN AJIL

DEFINITION

EVIDENCE

OBJECTIVE

PRICING

CONDITION

APPLICATION

- ✱ BBA is permitted in Islam only for non-ribawi commodities
 - ➔ For ribawi commodities of different category and type since the exchange of items must be conducted according to the principle of spot transactions and within the same contract session. Any delay in the exchange will transform this dealing to prohibited transaction.
- ✱ Majority of jurist stated that duration of contract must be clearly stated in a precise manner whether using Islamic calendar or any foreign calendar provided it is realiable.
- ✱ The payment of BBA could be made in several form:
 1. Instalment spread over a certain period
 2. One lump sum in the future
 3. Combination of both provided it clearly stated in the contract and both parties agreed with term and condition in the contract.





DIFFERENCES BETWEEN BBA AND BAY' AL-MURABAHAH

DEFINITION

- ✱ In classical Islamic law, there is no differences between BBA and bay' al-murabahah. They simply mean deferred payment sale at a mark-up.

EVIDENCE

- ✱ In Islamic bank practice, they confined BBA to medium and long-term asset financing and murabahah to short term financing.

OBJECTIVE

- ✱ Murabahah is a trust transaction; it require more strict condition compared to other type of transaction like BBA.

PRICING

CONDITION

APPLICATION





APPLICATION

DEFINITION

- ✦ In Malaysia, BBA financing is employed by bank to provide medium to long term financing to clients for acquiring eg. Property, land, motor vehicle, consumer goods, shares, overdraft facility, education financing package etc

EVIDENCE

- ✦ House financing is the most popular facility granted under the concept of Bai Bithaman Ajil (BBA) either to purchase existing completed houses, build or construct new house on customer's land even as a refinancing facility.

OBJECTIVE

PRICING

- ✦ In BBA, the customer sells the property purchased to the bank for a cash sum paid to the customer and the property will then be immediately resold back by the bank to the customer at higher price which include the bank's profit on the sale, payable by the customer to the bank by monthly installments over a fixed period of time.

CONDITION

APPLICATION





APPLICATION

DEFINITION

- ✦ Islamic bank also provides a facility of Overdraft Naqad by using this type of sale.

EVIDENCE

- ✦ The operation of overdraft Naqad involves two aqad or contracts.
- ✦ First, the bank buys the asset from the customer in cash and the latter sells it in cash as well.

OBJECTIVE

- ✦ Then, the bank deposited the money received from the customer in a designated current account (ASM/D).

PRICING

- ✦ The bank controls the money in this account. Therefore, the customer is actually uses his own money deposited by the bank in a current account.

CONDITION

APPLICATION





END OF CHAPTER

DEFINITION

EVIDENCE

OBJECTIVE

PRICING

CONDITION

APPLICATION



FIQH MUAMALAT فقه معاملات



BAY' AL-SALAM

بيع السلم



اَوْنُوْرَسِيْتِي تِيْكُوْلُوْكَى مَبَارَا
UNIVERSITI
TEKNOLOGI
MARA





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✱ DEFINITION

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✱ EVIDENCE

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✱ PILLARS OF AL-SALAM

✱ OBJECTIVE OF BAY' AL-SALAM

✱ CONDITION OF BAY' AL-SALAM

CONDITION

✱ DISADVANTAGE OF BAY' AL-SALAM

COMPARISON

APPLICATION



INTRODUCTION

DEFINITION

EVIDENCE

OBJECTIVE

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COMPARISON

APPLICATION

- ✦ This contract is crucial during the time of prophet hood and at the time where agricultural sector become outstanding and supreme.
- ✦ The wisdom of making salam permissible lies in the fact that salam facilitates a types of financing for people in need of it.
- ✦ By using salam contract, the buyer may benefit from its permissibility as well, by acquiring the commodity at a price below the market price.



DEFINITION

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

- ✱ Literally salam means giving ('ita'), advance (taslif) and leaving
- ✱ Technically:
 - ➔ Sale contract over prescribed commodity sold as a deferred liability on one party, in exchange for a price that is received during the contract session
- ✱ Maliki defined it as a sale in which capital sum (price) is paid in advance and the object of sale is deferred to a specified term.
- ✱ AAOIFI defined salam as the purchase of commodity for deferred delivery in exchange for immediate payment.



DEFINITION

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

- ✦ Bay' as-Salam or Salam means a contract in which advance cash payment is made for goods to be delivered later on.
- ✦ The seller undertakes to supply some specific goods to the buyer at a future date in exchange of an advance price fully paid at the time of contract.
- ✦ Salam- also know as sales by order.



EVIDENCE

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

★ Al-Quran



يَتَأْتِيهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

282. O you who have believed, when you contract a debt for a specified term, write it down.

- ➔ Ibnu Abbas commented that: 'I bears the witness that al-Salaf (Al-Salam) stipulated for a stated term had been made legal by Allah in His holy book and His permission is in it". He then recites the above verse.

★ Hadith

- ➔ Narrated by Ibn Abbas: The Messenger of Allah (s.a.w) came to Medina and the society used to pay in advance the price of fruits to be delivered within one or two years (the sub narrator is in doubt whether it was one to two years or two to three years)
- ➔ The Prophet S.A. said, "Whoever pays money in advance for dates (to be delivered later) should pay it for known specified weight and measure (of the dates).



EVIDENCE

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

✱ Ijma'

- ➞ Every single jurist that we came across had given their consensus with regards to the permissibility of Bay' Al-Salam particularly because the product in sale is one of counter-values in a contract (similar to the permissibility of postponing the monetary payment which is one of the counter — value as well).
- ➞ There is also the need of the people in it. The owners of the agricultural products and businesses also needed some financing to support themselves or to fund their crops until the day of harvesting. Hence, it is made permissible to fulfill these needs.



NATURE OF BAY' AL-SALAM

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

- ✱ Salam transaction occurs if the buyer has paid the purchase price to the seller in full at the time of sale. This is necessary so that the buyer can show that they are not entering into debt with a second party in order to eliminate the debt.
- ✱ Salam is actually an exception from the general ruling on the illegality of selling non – existence items (Bay' Ma'dum) since it can achieve certain economic objectives, as a rukhsah (exception) and an assistance for the people.
- ✱ Debt does not necessarily involve cash money but it can also involves every single item and property by the business society as a tradable item.



PILLARS OF AL-SALAM

DEFINITION

★ Rabb as-salam/ Musallim

➞ The Buyer

EVIDENCE

★ Muslam Ilaihi

➞ The Seller

OBJECTIVE

★ Ra's al-Mal

➞ The Price

CONDITION

★ Al-Musallim Fih

➞ The Product

COMPARISON

★ Sighah

➞ Ijab (Offer)

➞ Qabul (Acceptance)

APPLICATION





FLOWS OF BAY' AL-SALAM

DEFINITION

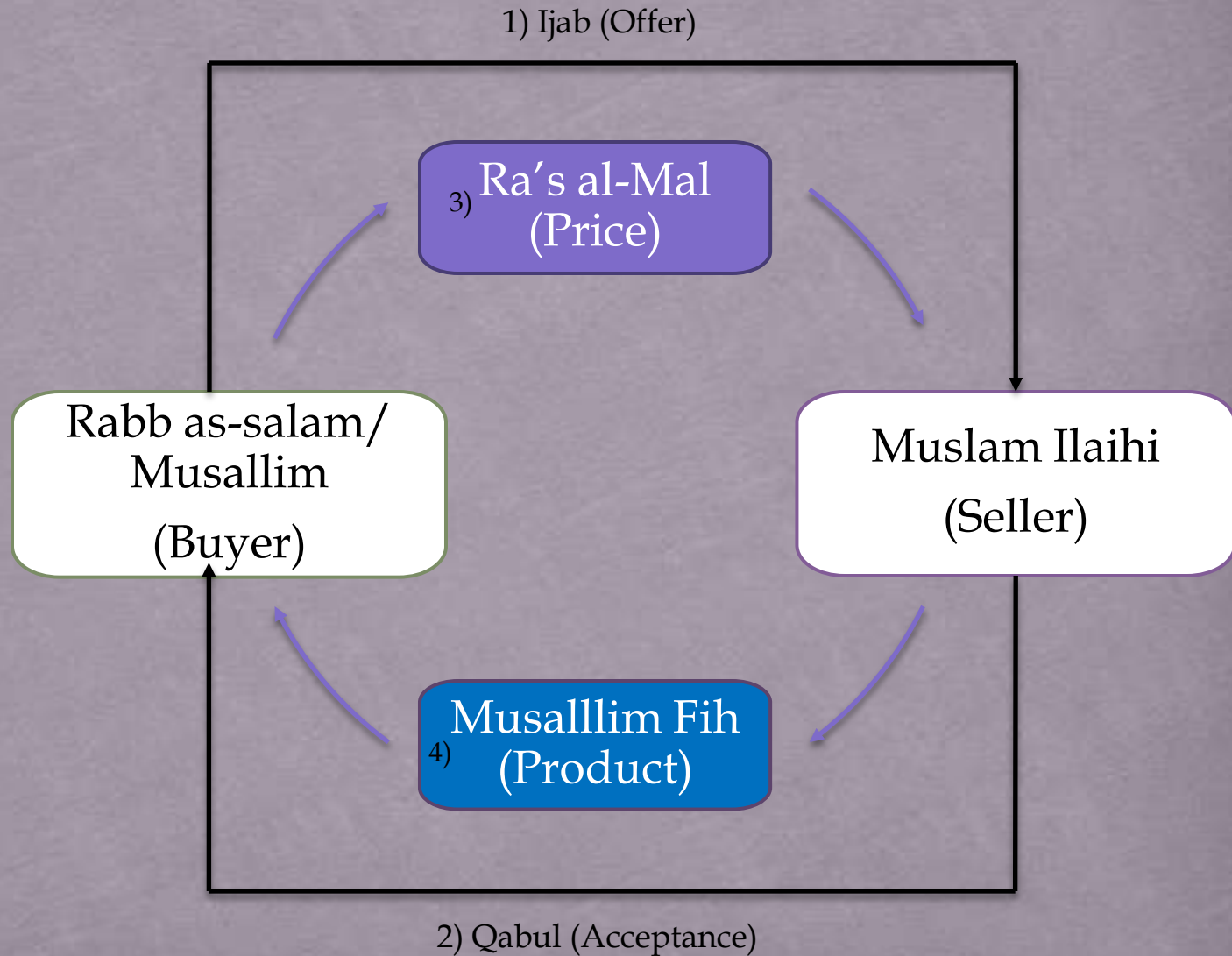
EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION





TYPES OF SALAM CONTRACT

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

Ordinary salam contract

- The normal salam contract that involves two transacting parties; the buyer (musallim) and the seller (musllam ilayh)

Parallel salam contract

- Contractual agreement consists of two different and independent contracts; one in which the bank is a buyer and the other in which the bank is a seller.
- The two contract cannot be tied up and performance of one contract should not be contingent upon the other.





THE OBJECTIVES OF BAY' AL-SALAM

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

✦ Provide the financing for small and medium enterprises

➞ The economic reality underlying the contract of Salam, the ordering of goods to be delivered later for a price paid in advance, was the financing of the business of a small trader or artisan by his customers.

✦ Benefits the trader or producer

➞ Provides Islamically accepted financing alternative and avoids any involvement in riba

✦ Benefits the purchaser

➞ Provides goods and products at a discounted price in return for the willingness of the purchaser to help the financing of the business venture.





CONDITIONS OF AL-SALAM

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

The jurists from various mazhab had agreed that Bay' Al-Salam is permissible provided that it specifies these six aspects (4 Ps + 2 Qs):

Product: The types and kinds of goods involved in the trade.

Period: The duration of the contract and its date of delivery.

Price: The amount of capital or price paid for the contract.

Place: Place of delivery for the merchandise when it is due.

Quality: The characteristics and specifications of every item.

Quantity: The quantity of goods ordered by the buyer.



CONDITIONS OF AL-SALAM

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

Conditions related to the price (ra's al-mal)

- The price must be clearly determined and paid in full by the buyer at the time of undertaking the sale to avoid later dispute.
- The seller must take possession of the price in full before departing one another; OTHERWISE it will be tantamount to the sale of debt for a debt which is prohibited.
- Maliki jurist allowed it to be paid within few days as long as it is not stipulated as conditions.
- If the price is ribawi item, it is not allowed to be exchanged for another ribawi item to avoid riba. Eg: wheat with barley.





CONDITIONS OF AL-SALAM

DEFINITION

Conditions related to the purchased commodity (mussalam fih)

EVIDENCE

OBJECTIVE

CONDITION

- Salam can be effected on commodity whose quality and quantity can be clearly specified; commodities which quality and quantity cannot be specified cannot be sold through salam.
- The commodity must be vastly available in the market at the time of contract until the time of delivery, to ensure the capability of the trader to deliver the product.
- The quantity, weight and measure of the commodity must be agreed upon in equivocal terms.

COMPARISON

APPLICATION

Conditions related to the date and place of delivery

- The exact date and place of delivery must be specified in the contract
- Scholars differ on the shortest duration of time of delivery either 3 days, more than half a day thirty days or up to the contracting parties to decide.





DIFFERENCES OF BAY' AL-SALAM AND BAY' ISTISNA'

DEFINITION

- Bay' Al-Salam and Bay' Al-Istisna' are both deferred delivery contract, however both instruments have its own application.

EVIDENCE

- Salam is equivalent to a forward sales for agricultural products while,

OBJECTIVE

- Istisna' is a forward sales for manufacturing or construction contract.

CONDITION

BAY' AL-SALAM	BAY' ISTISNA'
Salam can be effected on any thing, no matter whether it needs manufacturing or not.	The subject of Istisna is always a thing which needs manufacturing
It is necessary for Salam that the price is paid in full in advance	Payment for Istisna can be made in staggered basis.
The contract of Salam, once effected, cannot be cancelled unilaterally	The contract of Istisna can be cancelled before the manufacturer starts the work

COMPARISON

APPLICATION





DIFFERENCES BETWEEN BAY' AL-SALAM & NORMAL SALES

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

BAY' AL-SALAM	ELEMENT	NORMAL SALES
Must specified the duration of the contract and its date of delivery	DURATION	Does not permit any time frame
A contract in which advance cash payment is made for goods to be delivered later on	NATURE	A permanent contract without any specified period of expiration
At a discount – cheaper than normal pricing	PRICING	Market rate – based on the ability to pay cash
Any thing, no matter it needs manufacturing or not.	SUBJECT	Physical Goods and property



APPLICATION

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION

- ✱ This concept rarely used by Islamic banks because it does not facilitate many advantages as compared to other concepts.
- ✱ The prices of purchased commodities in as-salam should be paid in advance while the subject matter will be delivered at a later date.
- ✱ In general it clearly differs from numerous Islamic bank products, which provides better position for the customer who are in need, in which they would obtain the desired commodity with a deferred payment term.
- ✱ Islamic banking product which are based on this concept are:
 - Hybrid Salam Financing
 - Salam Financing Working Capital
 - Parallel Salam Financing



HYBRID SALAM FINANCING

DEFINITION

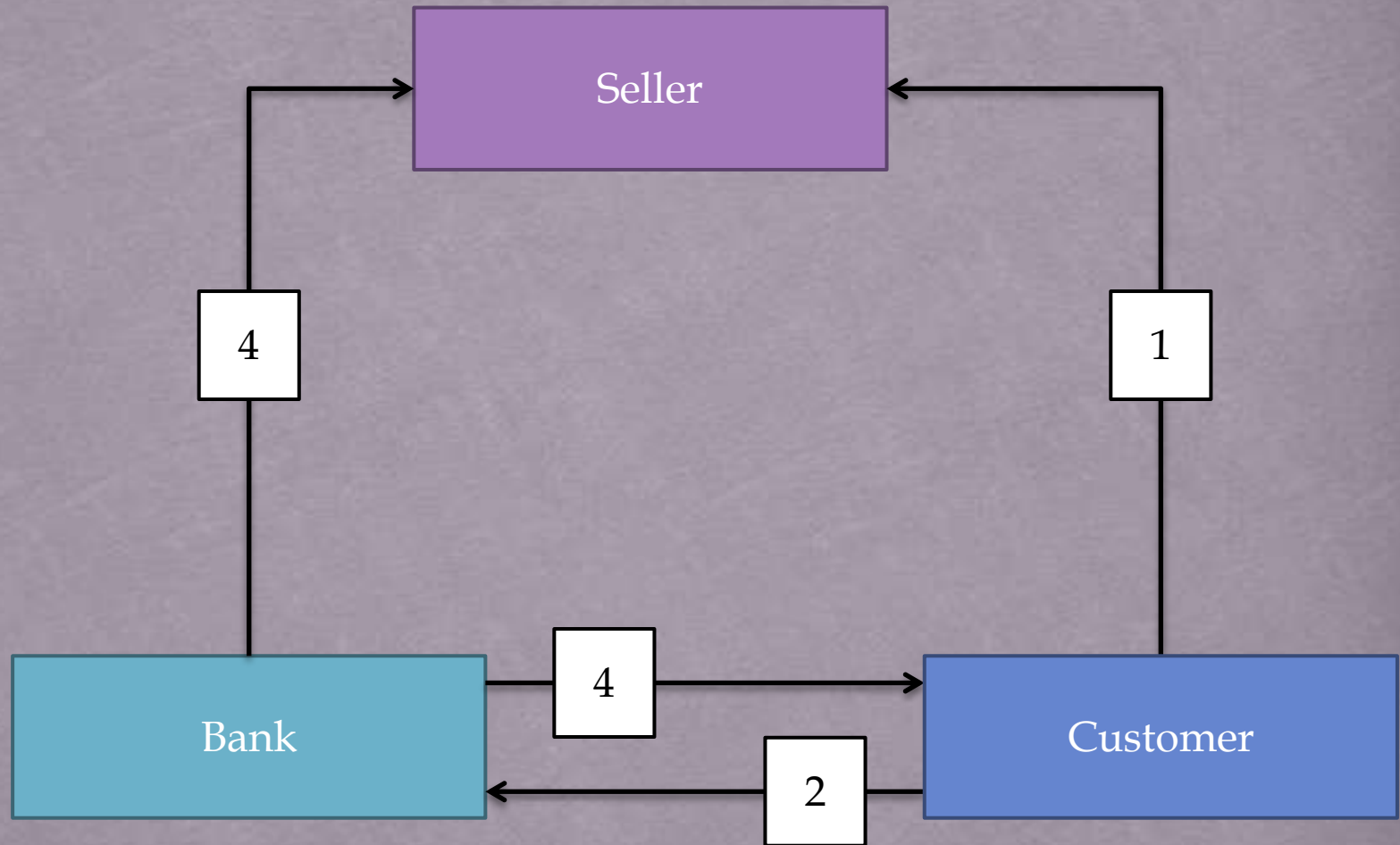
EVIDENCE

OBJECTIVE

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COMPARISON

APPLICATION





SALAM FINANCING WORKING CAPITAL

DEFINITION

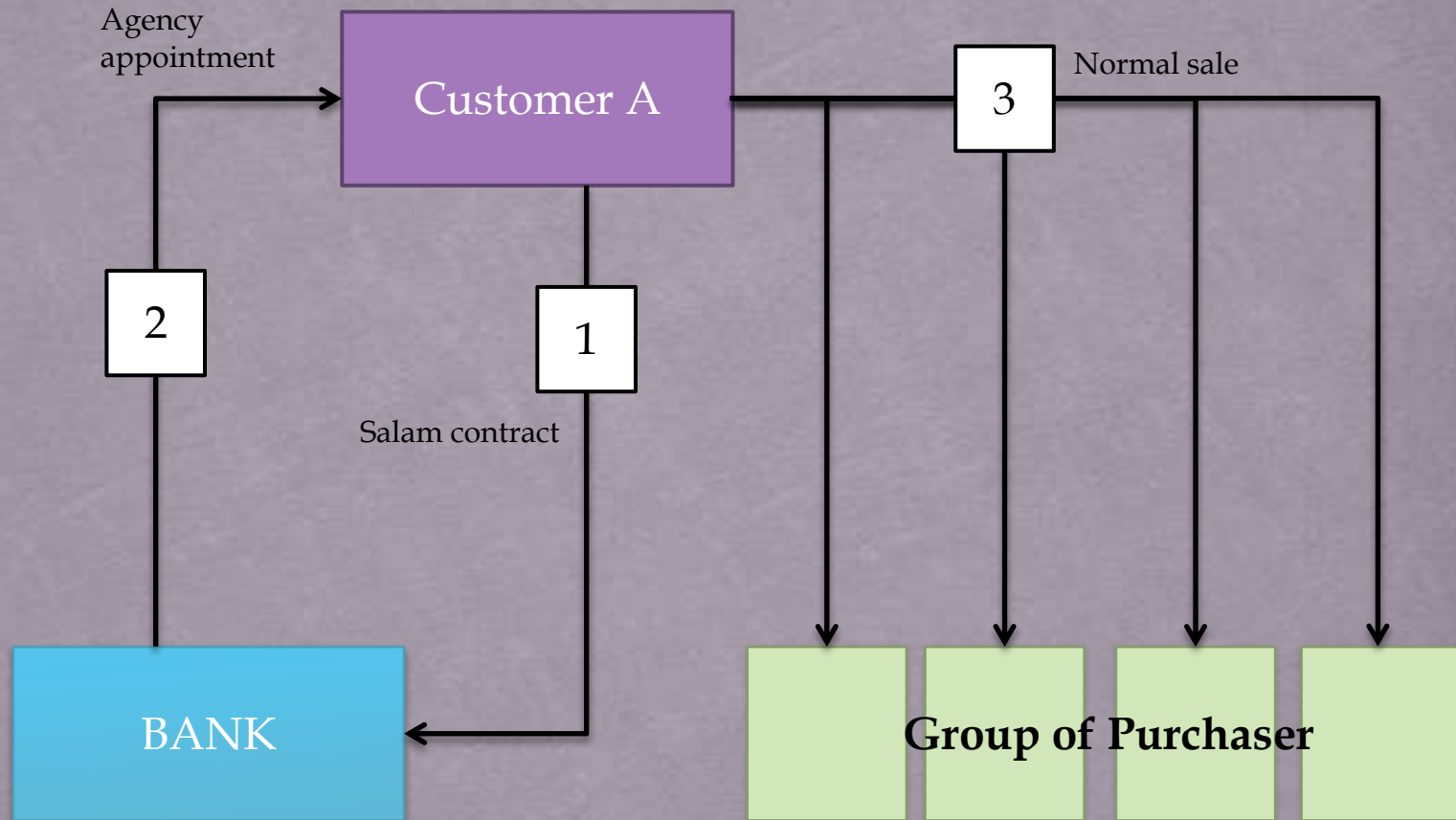
EVIDENCE

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PARALLEL SALAM FINANCING

DEFINITION

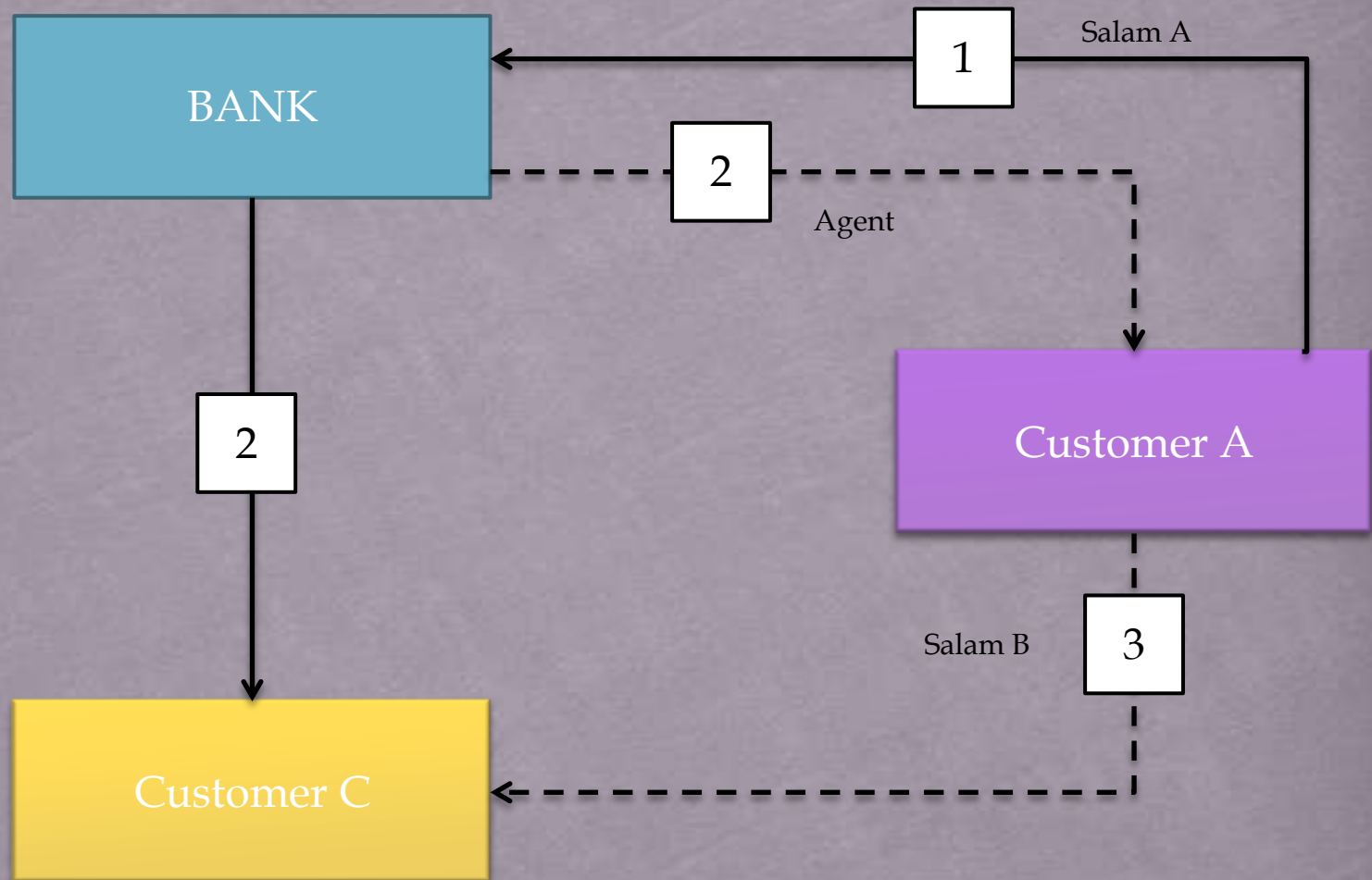
EVIDENCE

OBJECTIVE

CONDITION

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APPLICATION





END OF CHAPTER

DEFINITION

EVIDENCE

OBJECTIVE

CONDITION

COMPARISON

APPLICATION



FIQH MUAMALAT

فقه معاملات



BAY' AL-ISTISNA'

بيع الإستصناع



اَوْنُوْرْسِيْتِي تِيْكْنُوْلُوْجِي مَارَا
UNIVERSITI
TEKNOLOGI
MARA





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❖ TYPES OF AL-ISTISNA'

❖ CONDITION OF AL-ISTISNA'

❖ DIFFERENCES BETWEEN AL-ISTISNA' AND BAY' AL-SALAM

COMPARISON

❖ MODERN APPLICATION

APPLICATION





DEFINITION

DEFINITION

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COMPARISON

APPLICATION



✿ Literally:

- ➞ The word istisna' derived from the arabic verb "istasna'a" which is mean to request someone to manufacture an asset.

✿ Technically:

- ➞ Bay' al-istisna' is defined as a contractual agreement with manufacturer to produce items with specified description at a determined price, and manufactured from his own materials with his own effort.



DEFINITION

DEFINITION

EVIDENCE

PILLARS

CONDITION

COMPARISON

APPLICATION



- ✱ The Majallah al-Ahkam al-Adliyyah (Ottoman code of Islamic civil law) defines istisna' as

➡ A contract with the maker, (manufacturer) on the specific task that is liable to complete.

- ✱ Malaysian Accounting Standards Board (MASB) defines the istisna' as:

➡ A contract of exchange whereby an IFI, at the request of the customer, acquires an asset for purchase or construction based on specifications by the customer. The payment of acquisition price to manufacturer, developer or vendor of the asset is made up-front by determined future date.



DEFINITION

DEFINITION

EVIDENCE

PILLARS

CONDITION

COMPARISON

APPLICATION



- ✿ It is an order to producer to manufacture a specific commodity for the purchaser.
- ✿ The emphasis in istisna is the specificity of subject matter to avoid gharar (uncertainty) ensuring that the seller cannot transact with something that cannot be accurately described; one can describe equipment, a factory or an industrial plant, but not fish in the sea prior catching them since their type and volume is unknown.
- ✿ Upon delivery, the IFI sells it to the customer at a prevailing market price comprising original acquisition price and a margin of profit.
- ✿ The customer repays by installments within a period and in the manner agreed between the IFI and the customer.



EVIDENCE

DEFINITION

EVIDENCE

PILLARS

CONDITION

COMPARISON

APPLICATION

- ✱ According to jurist, the legality on an istisna' contract is established from different legal sources such as the Sunnah, ijma', qiyas and istihsan.
- ✱ There is no differences of opinion on its permissibility. It clearly can be seen from hadith:
 - ➔ Indeed that the Prophet s.a.w booked the making of a golden ring
- ✱ The istisna' contract is legitimate on the basis of the people's customary practice of this contract in all periods of time without any objection, which in turn constitutes a legal consensus.





PILLARS OF ISTISNA'

DEFINITION

✱ Mustasni'

➞ Customer

EVIDENCE

✱ Sani'

➞ Manufacturer

PILLARS

✱ Ra's al-Mal

➞ The Price

CONDITION

✱ Masnu'

➞ The Product

COMPARISON

✱ Sighah

➞ Ijab (Offer)

APPLICATION

➞ Qabul (Acceptance)





FLOWS OF ISTISNA'

DEFINITION

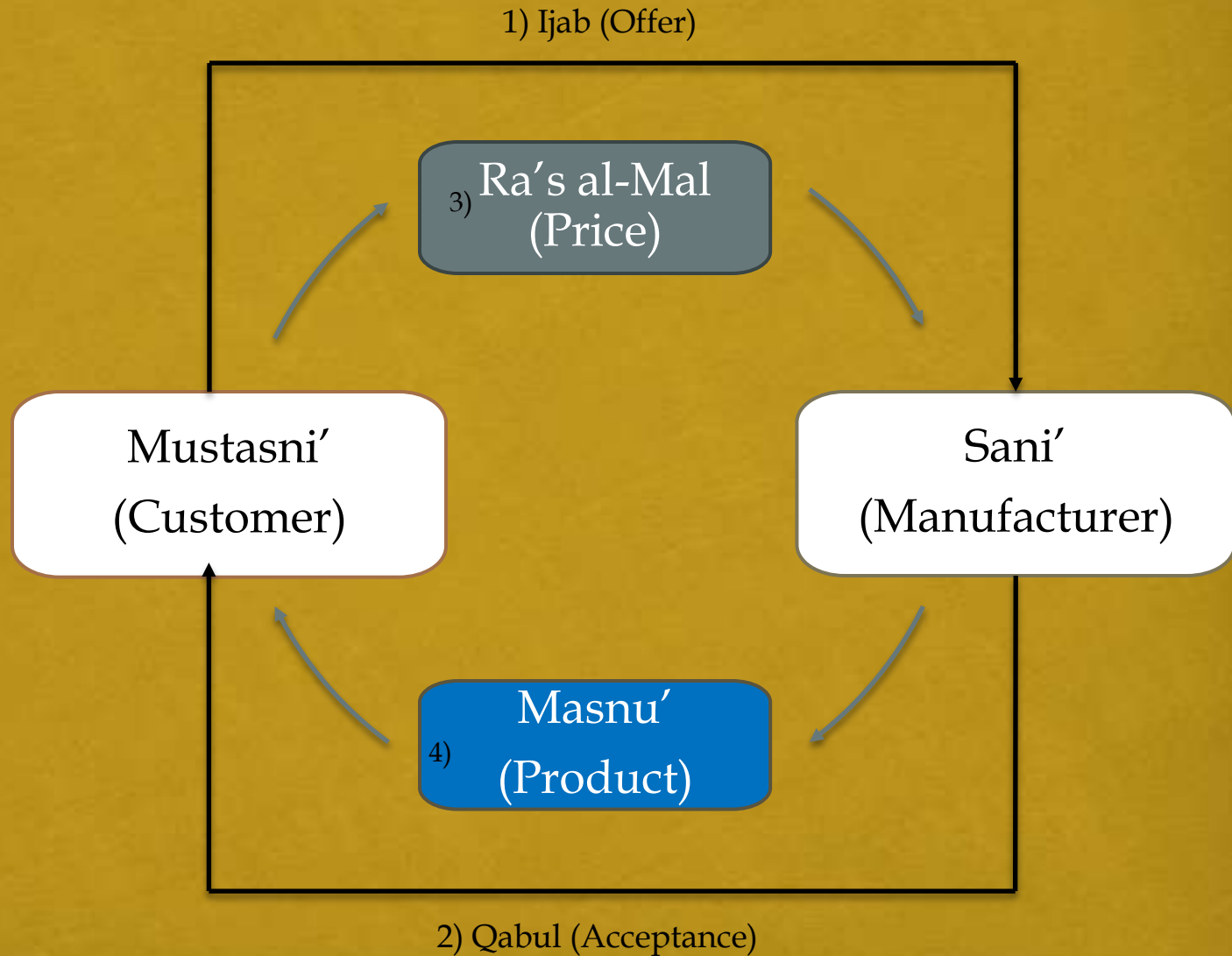
EVIDENCE

PILLARS

CONDITION

COMPARISON

APPLICATION





TYPES OF ISTISNA' CONTRACT

DEFINITION

EVIDENCE

PILLARS

CONDITION

COMPARISON

APPLICATION

Classical Istisna'

- The normal istisna' contract that involves two transacting parties; the customer (mustasni') and the manufacturer (sani')

Parallel Istisna'

- Contractual agreement consists of two series of separate istisna' contracts whereby the first istisna' contract is between the ultimate purchaser (customer) and the seller (bank), who is responsible for delivering the specified asset to the purchaser.





CONDITION OF ISTISNA'

DEFINITION

EVIDENCE

PILLARS

CONDITION

COMPARISON

APPLICATION



Conditions of subject matters (masnu')

- The object to be manufactured must be precisely determined in its type, kind, quantity and quality, considering that istisna' contract is a form of sale of the non-existence.
- The object of an istisna' contract must be something that the people are familiar with to contract it on the basis of manufacture and construction process.
- Istisna' contract always associated with the risk of uncertainty of the deliverability of the subject matter which can be mitigated through the above said mechanism.
- If the subject matter does not conform to the contractual specifications at the time of delivery, the purchaser has the right to either refuse or accept it.



CONDITION OF ISTISNA'

DEFINITION

EVIDENCE

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Conditions of time of delivery

- The best view to fix the delivery time to avoid dispute even though it is not a requirement.
- The time of delivery of the manufactured object must be clearly specified to avoid uncertainty and ambiguity which may lead to a later dispute among the transacting parties.
- The customer permitted to penalize the manufacturer if the latter fails to deliver the work on specified date.

Conditions of price for istisna'

- Price of istisna may be in the form of money, commodity and usufruct.
- Price of istisna may be spot and differed therefore istisna is applicable where salam is not applicable.
- Price of istisna is can be paid in installments.
- The installments may be tied up with different stages of projects.
- When the required goods have been manufactured by the manufacturer purchaser can exercise his option of defect, but he cant use his option of seeing.



DIFFERENCES BETWEEN AL-ISTISNA' AND SALAM

DEFINITION

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BAY AL-ISTISNA'	BAY' AL-SALAM
The subject of istisna' is always a thing which needs manufacturing.	The subject can be any thing, whether need manufacturing or not
The price in istisna' does not necessarily need to be paid in full in advance.	The price has to be paid in full in advance.
Time of delivery of istisna' product does not have to be fixed	Time of delivery is an essential part of the sale
The contract can be cancelled before the manufacturer starts working.	The contract cannot be cancelled unilaterally.





APPLICATIONS

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- ✱ In contemporary Islamic finance, an istisna' contract is applicable to various industrial productions which can be constructed or manufactured and supervised by specification.
- ✱ Customers are able to apply for the istisna' financing facility and other product offered by Islamic bank using istisna' contract such as:
 - ➔ Parallel istisna' (Istisna' Mawazi)
 - ➔ Hybrid Istisna'
 - ➔ Sukuk istisna'





PARALLEL ISTISNA' (ISTISNA' MAWAZI)

DEFINITION

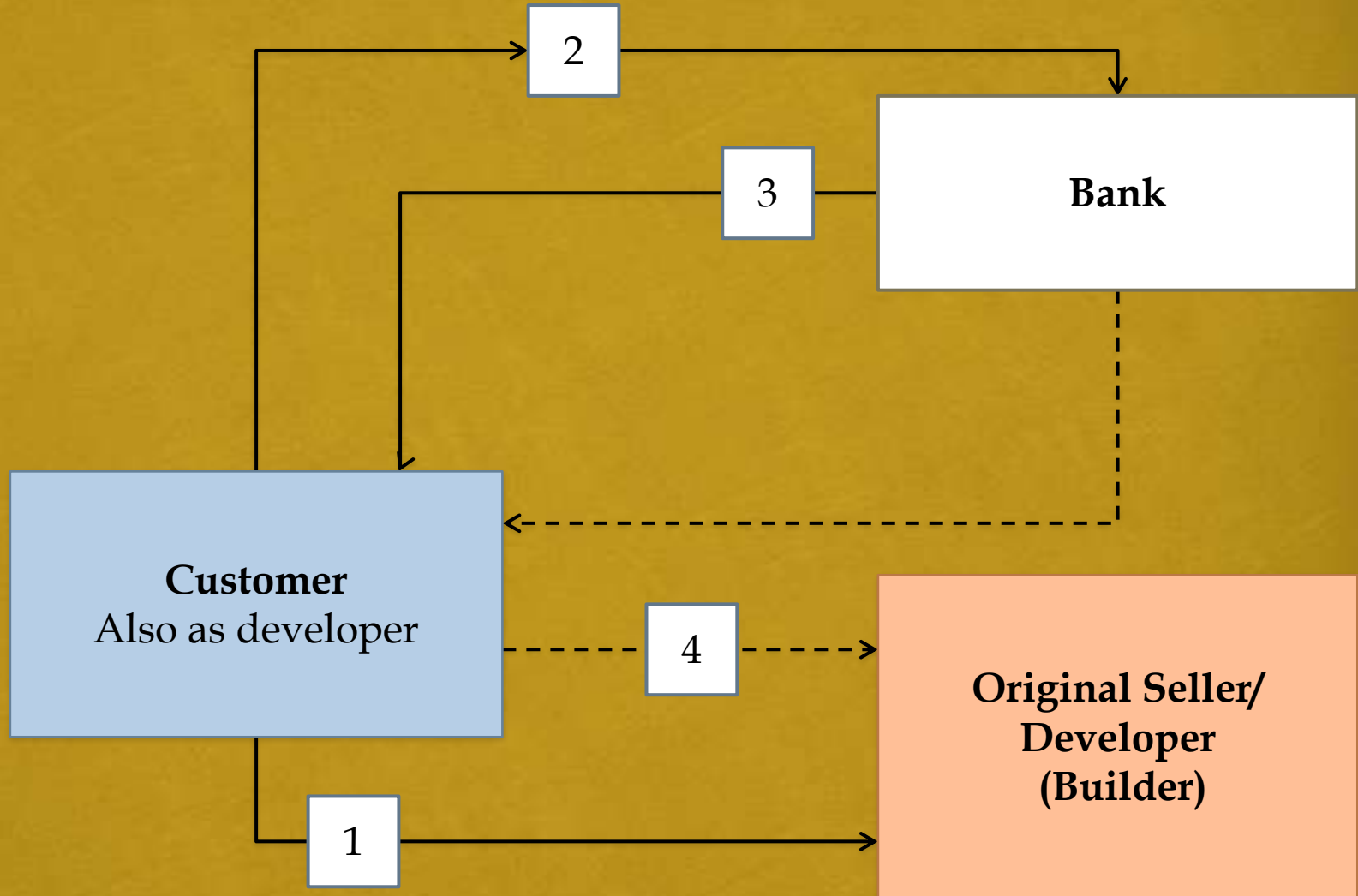
EVIDENCE

PILLARS

CONDITION

COMPARISON

APPLICATION





PARALLEL ISTISNA' (ISTISNA' MAWAZI)

DEFINITION

EVIDENCE

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- ✦ Parallel salam takes effect through two separate contract.
- ✦ In the first contract the IFI act in the capacity as manufacturer, builder or supplier and concludes a contract with the customer.
- ✦ In the second contract the IFI act in the capacity of a purchaser and concludes another contract with a manufacturer, builder or supplier in order to fulfill its contractual obligations towards the customer in the first contract.
- ✦ By this process a profit is realized through the difference in price between the two contracts and in most cases, one of the contract is concluded immediately and the second contract concluded later.





END OF CHAPTER

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FIQH MUAMALAT

فقه معاملات

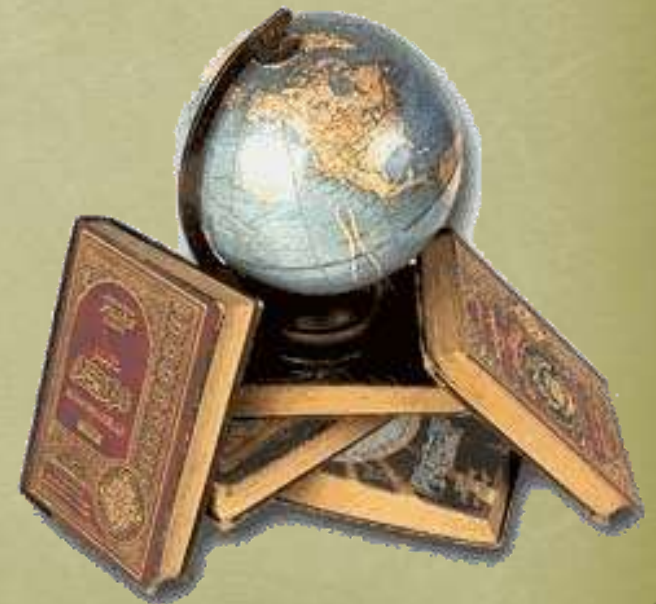


AL-IJARAH

الإجارة



اَوْنَبُورْسِيَّتِي تَيَكُونُ لَوْ كُنِي مَبَارَا
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- ❖ DEFINITION
- ❖ EVIDENCE
- ❖ PILLARS OF AL-IJARAH
- ❖ CONDITION OF AL-IJARAH
- ❖ COMPARISON BETWEEN AL-IJARAH AND NORMAL SALES
- ❖ AL-IJARAH THUMMA AL-BAY'





DEFINITION

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❖ Literally:

- ➞ Ijarah came from the root word which means compensation or . It also means the sale of usufruct.

❖ Technically:

- ➞ A contract of proposed and known usufruct with a specified and lawful return or compensation for the effort or work which has been expended.
- ➞ It is used to express the sale (bay') of a known benefit in return for its known equivalent.

➞ Usufruct:

- ➞ The usage of shelter for house, transportation for vehicles and others for a fee.

➞ Services:

- ➞ To work using physical energy or skills such as lifting goods, cleaning of office, writing, lecturing, and others for a fee





NATURE OF AL-IJARAH

DEFINITION

- ❖ Lease is a contract by which the owner of land, a building allows another person to use it for a specific time, usually in return for a rent

EVIDENCES

- ❖ Al-Ijarah means a lease contract as well as a hire contract.

PILLARS

TYPES

- ❖ Al-Ijarah, is also known as al-Kira'. It is like someone who is selling to someone else a right to benefit or as a payment for services with a certain price to be paid for it.

OPINION OF SCHOLARS

- ❖ In the context of Islamic banking it is a lease contract under which the bank or financial institution leases equipment or a building to one of its clients against a fixed charge.

APPLICATION





DIFFERENCES OF OPINION

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OPINION		REASON
Forbids contract of Ijarah.	Some jurist including Hassan al-Basri, al-Nahrawani and others	Ijarah is the sale of usufruct or services, and services is something intangible and does not exist at the time of contract.
		It only can be achieve gradually over certain period and something that not exist cannot be sold.
		It is not permissible to associate bay' (trade) with something that could only be realized and achieved in the future
Allowed contracts of Ijarah	Majority of jurist including Ibn Rushd	Even though usufruct does not exist at the time of contract, normally it could be realized or achieved
		This type of usufruct or benefit could ordinarily be accomplished, or its accomplishment or non-accomplishment is rather similar



EVIDENCE

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★ Quran:



فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ

And if they breastfeed for you, then give them their payment

قَالَتْ إِحْدَاهُمَا يَأْبَتِ اسْتَعْجِرُهُ إِنَّ خَيْرَ مَنْ اسْتَعْجَرْتُ الْقَوِيُّ الْأَمِينُ ﴿٢٦﴾ قَالَ إِنِّي أُرِيدُ أَنْ
أُنْكَحَكَ إِحْدَى ابْنَتَيَّ هَاتَيْنِ عَلَى أَنْ تَأْجُرَنِي ثَمَنِي حَجَجٍ فَإِنْ أَتَمَمْتَ عَشْرًا فَمِنْ عِنْدِكَ وَمَا
أُرِيدُ أَنْ أَمْلِكَ سَتَجِدُنِي إِنْ شَاءَ اللَّهُ مِنَ الصَّالِحِينَ ﴿٢٧﴾

26. said one of the (damsels): "O My (dear) father! engage Him on wages: truly the best of men for Thee to employ is the (man) who is strong and trusty"....

27. He said: "I intend to wed one of these My daughters to thee, on condition that Thou serve me for eight years; but if Thou complete ten years, it will be (grace) from thee. but I intend not to place Thee under a difficulty: Thou wilt find me, indeed, if Allah wills, one of the righteous."





EVIDENCE

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✱ Hadith:

➞ “Give a servant his fee before his sweat dries up”

➞ (Al-Baihaqi)

➞ Reported by Ibn Abbas to the effect that Prophet (s.a.w) had himself cupped and gave the person who cupped him his remuneration, if it is prohibited he would not have paid him in the first place.

✱ Ijma’:

➞ The ummah had come to a consensus during the time of companion on permissibility of Ujrah since the need of people for usufruct is similar to their need to physical good.





PILLARS OF AL-IJARAH

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1. Muajjir:

➞ A person who give something for hire – Lessor, landlord, owner etc.

2. Musta'jir:

➞ A person who takes on hire – Lessee, tenant, renter etc.

3. Ma'jur:

➞ A thing given for rent

4. Al-Manfaah:

➞ The benefit from a thing – usufruct, services etc.

5. Ujrah:

➞ Price or fee given for the payment of rent or lease

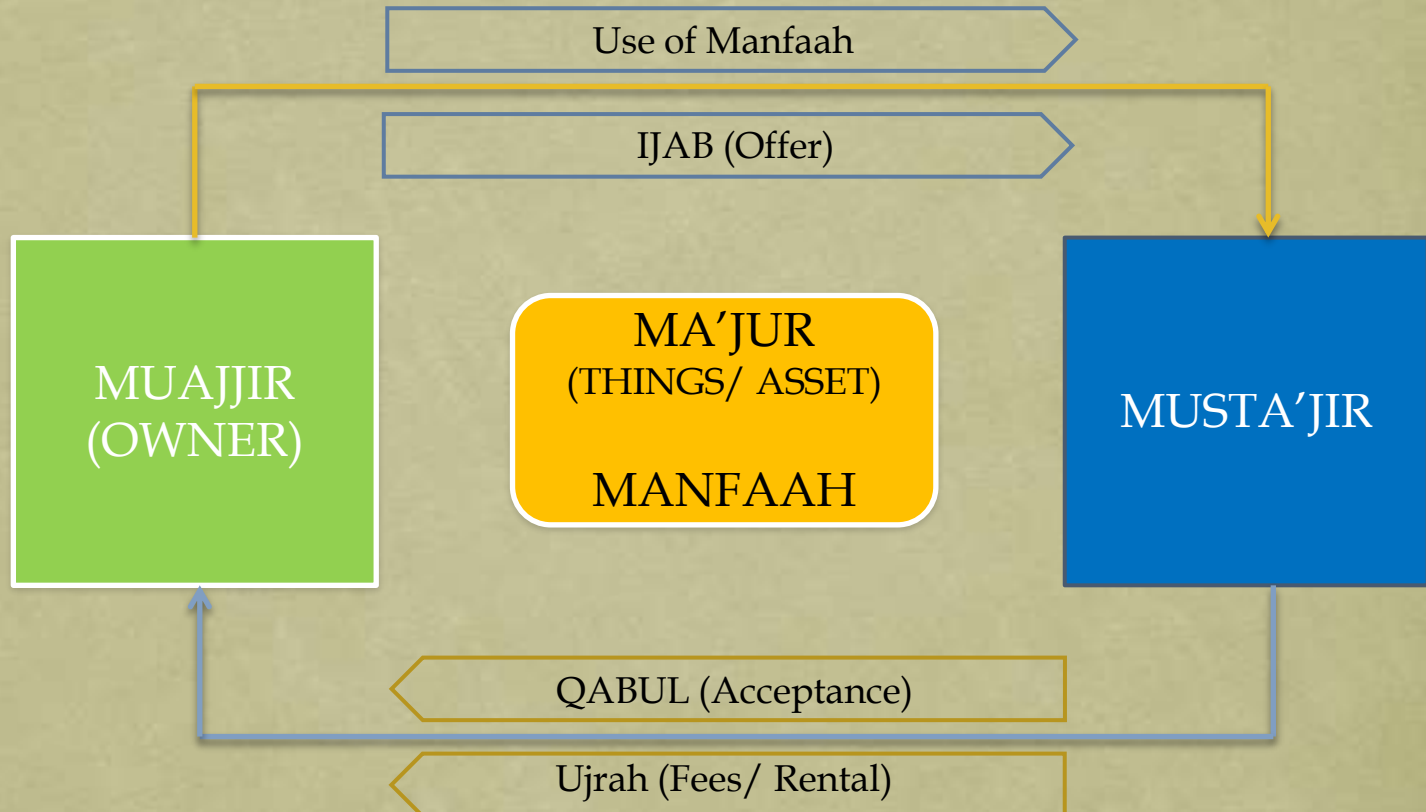
6. Sighah:

➞ Offer (Ijab) and Acceptance (Qabul)



FLOWS OF AL-IJARAH

❖ Flows of al-Ijarah (Renting/ Leasing)



DEFINITION

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TYPES OF IJARAH

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Ijarah

Based on Subject Matter

Tangible asset

Labour

Description of asset

Based on The
Contractual Relationship

Operating lease

Financial lease



TYPES OF IJARAH

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Based on Subject Matter of the Leased Asset

1.	Ijarah 'Ain	• To lease the usufruct from the specific goods or asset
		• Comprises all tangible assets.
		• E.g.: property, transport, facilities and factories, etc.
2.	Ijarah 'Amal	• To lease out the works or self skills
		• Two type of workers: 1. Employee : person/entity that work only for the interest of a particular employer or independent contractor; does not have right to work for any other lessee during contract. 2. Independent contractor: offer services to the general public
		• E.g: consultant, lawyer, contractor
3.	Ijarah Mawsufah fi al-Zimmah	• Form of ijarah where asset need to be described in advance
		• The leased item/asset is not available during contract
		• The asset must be delivered on a future agreed date
		• No requirement should be imposed for the rental payment to be paid in advance





TYPES OF IJARAH

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Based on The Contractual Relationship

1.	Operating Lease	• Original form of ijarah 'ain
		• Features of operating lease: • Asset acquisition is in full ownership of the lessor – legal and beneficial ownership • Responsibility to maintain bear by the lessor in administrative affairs and maintenance of asset; lessee only responsible in the maintenance due to the usage and has to pay rent per agreed. • Risk on the asset under liability and responsibility of the lessor • High risk in nature.
2.	Financial Lease	• Normally used and offered by Islamic bank as financial intermediaries in: • Obtaining desired asset • Obtaining cash money for various purposes
		• Known as al-Ijarah Thumma al-Bay', al-Ijarah wa al-Iqtina' or al-Ijarah Muntahiyah bi al-Tamlik.





SUBJECT MATTER OF AL-IJARAH

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1. Since Ijarah is the sale of usufruct, majority of jurist forbid Ijarah on trees and grapevines, since fruit are physical goods and Ijarah is the sale of usufruct and not physical goods.
2. It is also not permissible to conduct Ijarah on animal for its milk; ghee, wool or offspring; water in the river or well or canal since all these are goods, and not eligible to be under contract of Ijarah.
3. It is also not permitted to conduct ijarah on non-arable (not fit for cultivation) land which have ponds for fishing, canes and wildlife for hunting since all these are goods. It is not legal to rent pond or lake for fishing.
4. Basic principle of Ijarah: **every item that could be utilized with its original substance and part consistently being conserved or preserved is allowed for Ijarah, and if not is not legal.**





CONDITIONS OF AL-IJARAH

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✦ The conditions for Property

1. The property must belong to lessor
2. The property is known to both parties and is specified
3. The property can be acquired by the lessee for his use until the end of tenancy or lease
4. The property should be in a good condition possible for leasing
5. It is the liability of the lessor to repair damages of the property in order to make it possible for leasing
6. It is the liability of the lessee to ensure the cleanliness and safety of the property





CONDITIONS OF AL-IJARAH

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7. The liability of the lessee over the property is under the concept of trust (wadiah yadd amanah). However, in the case of damages due to his negligence, the lessee is liable to pay the compensation (dhaman).
8. The lessee cannot lease the property to another tenant and the second contract is considered as illegitimate.
9. The sale of a lease property is legitimate. However, the lessee has a right to use the property until the lease contract has expired, where the property will then be submitted to the buyer.
10. The concept of al-Wadiah is applied when the lease contract has expired and the lessee is still holding the property.





CONDITIONS OF AL-IJARAH

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◆ The conditions for Usufruct

1. The use of the service (usufruct) can be valued with money.
2. The usufruct must be valid according to Islamic commercial law.
3. The lessee should be able to make use of the property on lease.
4. The usage of the property should be made clear in order to avoid any argument.
5. The usufruct does not entitle the lessee to own the property.
6. The lessee is not obliged to inform the lessor his intention for using the property, except in the case of possible destruction.
7. The usufruct of property beyond its normal usage is considered as an act of intention.





CONDITIONS OF AL-IJARAH

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✦ The conditions for Payment

1. The amount of payment of rent must be known. If the payment is not in form of cash money, the goods in return must be specified its quantity, types and its characteristics.
2. The payment of rent can be made in advance.
3. If the condition for payment does not prescribed to be paid in advance, the payment begins when usufruct started.
4. If the payment is made on daily, weekly or monthly basis, the payment should be made at the end of period unless otherwise stated on the agreement.
5. If the property cannot be used the payment is not obliged upon the user.





CONDITIONS OF AL-IJARAH

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❖ The conditions for Sighah

- ➔ The contract of offer and acceptance should follow all the conditions of the contract of sale in Islam; i.e. it should be on mutual acceptance, cannot be made in form of promises or an order and the offer and acceptance should be the same.





DIFFERENCES BETWEEN IJARAH & NORMAL SALES

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IJARAH	ELEMENT	NORMAL SALES
Based solely on a predetermined time frame as part of the requirement of the contract	DURATION	Does not permit any time frame
A temporary contract with a specified time frame for its expiry and due time	NATURE	A permanent contract without any specified period of expiration
No time of ownership	OWNERSHIP	Transfer of ownership occurs
Usufruct and services	SUBJECT	Physical Goods and property





MODERN APPLICATION

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1. Simple ijarah
2. AITAB
3. Musharakah mutanaqisah
4. Ijarah based credit card
5. Sukuk ijarah
6. Ijarah rental swaps





AL-IJARAH THUMMA AL-BAY' (AITAB)

DEFINITION

- ✱ AITAB also known as *ijarah wa iqtina'* (إجارة واقتناء) or *al-ijarah muntahiya bi-tamlik* (الإجارة المنتهية بالتملك)

EVIDENCES

- ✱ Definition:

➞ Owning the benefit of certain assets for a specific period of time, by paying an agreed sums of rental, with an agreement that the owner will transfer the rented asset to the hirer at the end of the agreed period or during the period, provided all rental payments or installments have been made in entirety

PILLARS

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- ✱ In theory, the contract of AITAB shall consist of two different contracts, namely:

1. The contract of lease (*al-ijarah 'ain*)
2. The contract of sale (*al-bay'*)

- ✱ AITAB is a contract of leasing with a promise to sell the asset.

APPLICATION





FLOWS OF AITAB

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- ✱ In AITAB, the contract of al-ijarah runs separately from the contract of al-bay'. These stages are:
 - ➡ Stage 1: Executing the contract of true leasing (al-ijarah 'ain)
 - ➡ Stage 2: Executing the contract of sale (al-bay') at a nominal value agreed upon by both parties.





FLOWS OF AITAB

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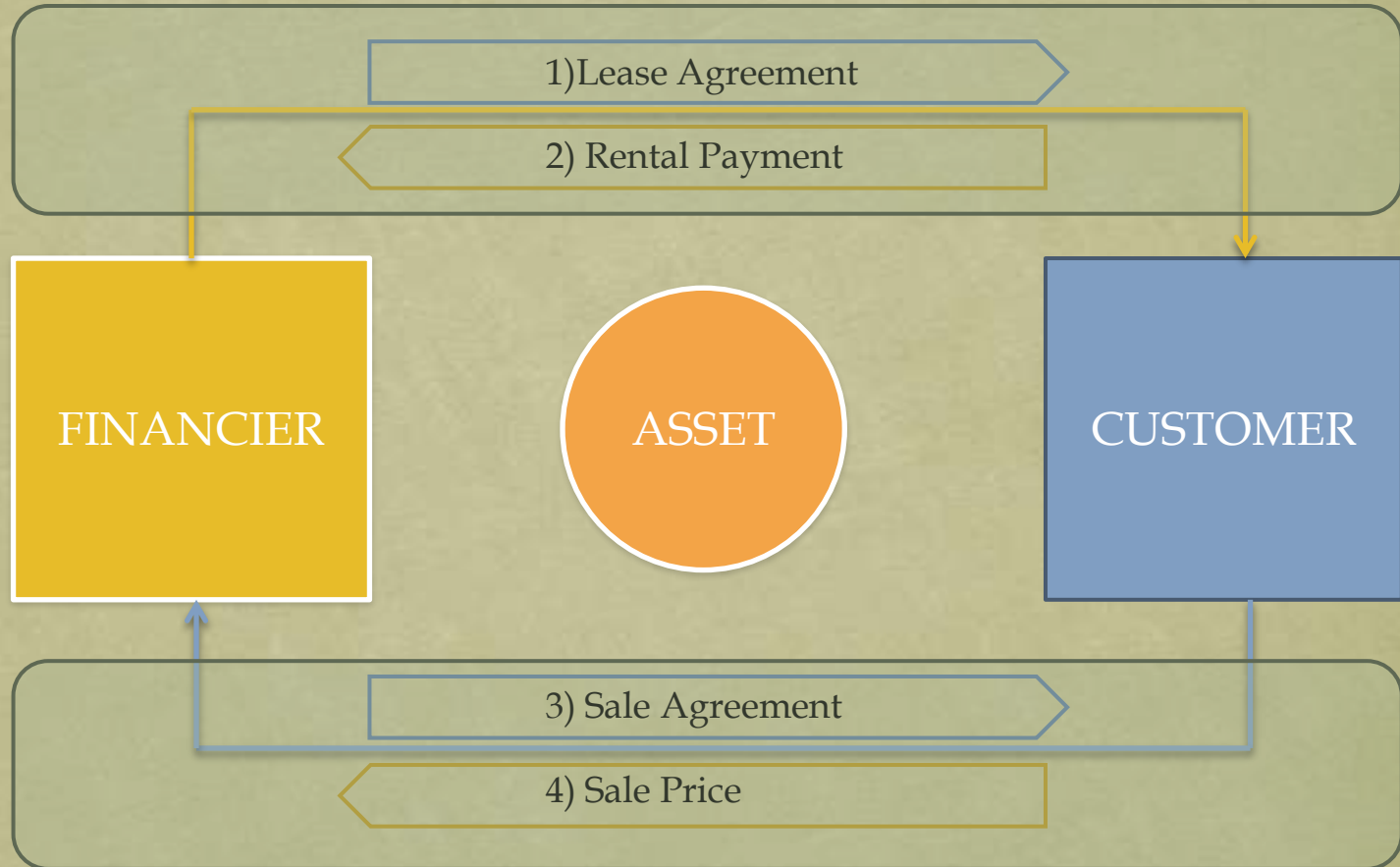
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1st: Contract of al-ijarah





END OF CHAPTER

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FIQH MUAMALAT

فقه معاملات



AL-WAKALAH

الوكالة



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- ✦ TYPES OF AL-WAKALAH
- ✦ CONDITIONS OF AL-WAKALAH
- ✦ MODERN APPLICATION





DEFINITION

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◆ Literally

- ➔ Agency, representation, proxy, mandate, authorization, delegation, empowerment etc.

◆ Technically:

- ➔ The appointment of someone to take over the appointer's affairs on his/her behalf for the purpose of accomplishment of certain tasks

◆ Wakalah implies a kind of delegation by a person of his business to act on his behalf.

- ◆ It is lawful if a person appoints another as his representative for selling or buying, letting or hiring, giving or taking a pledge for depositing or receiving a gift, for safe keeping, for making a compromise, and for giving an acquaintance and for making an admission etc.



EVIDENCE

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❖ Al-Quran



❖ إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا

Alms are for the poor and the needy, and those employed to administer the (funds)

- ➔ The verse indicate the assigning of agents for zakat management (collection and distribution)

❖ Hadith:

- ➔ Reported by Urwah R.A that the prophet S.A.W gave him one gold Dinar to buy with it (be an agent for the Prophet S.A.W) a sheep but instead he managed to buy two sheep. He then sold one of it for one gold Dinar and then presented the prophet with both the sheep and one gold Dinar that he acquired. The prophet S.A.W prayed for him to be given blessings (barakah) in all his trade and transactions and mentioned that even if he sells solid soil, he will definitely gain profit in it.
- ➔ Reported by Abi Hurairah R.A to the effect that: the Prophet S.A.W had sent Umar R.A to be his agent in Zakat collection
 - ➔ (representative in zakat collections)





EVIDENCE

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- ➞ Reported by Sulayman bin Yasar that: The prophet S.A.W sent Abu Rafi' and a man of the Ansar to accept (Qabul) his S.A.W marriage to Maimunah binti al-Harith on his S.A.W behalf while he was in Madinah before he had left for Hajj (representative in Marriage)

✦ Ijma':

- ➞ The ummah had come to a consensus on the legitimacy of Wakalah contract since there is a great need for it, and individuals are also not capable of catering and handling all his/her needs, matters and daily affairs on their own without having to resort for the help of other people.
- ➞ Hence, it is permitted because it is one of the types of cooperation on good deeds and fear of God (Ta'awun Alal Birri Wa Taqwa) encouraged in Islam.



PILLARS OF AL-WAKALAH

DEFINITION

1. Wakil

➔ The authorized agent, representative, proxy, trustee

EVIDENCES

2. Muwakkil.

➔ Authorizer, mandatory, client, principal

PILLARS

3. Muwakkal Bih

➔ Things or subject matter that is being entrusted for, or the business deals involved

TYPES

4. Sighah

➔ Ijab (Offer)

➔ Qabul (Acceptance)

CONDITIONS

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FLOWS OF AL-WAKALAH

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TYPES OF AL-WAKALAH

DEFINITION

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1.	Wakalah Mutlaqah	Unlimited Agency/ Unrestricted Wakalah
		A Wakalah contract that is not restricted to any conditions except for those that are permitted in Islam
		Not confined to certain circumstances or time limit.
2.	Wakalah Muqayyadah	Limited Agency/ Restricted Wakalah
		A Wakalah contract that is restricted or confined with certain conditions that are legitimized by Islam
		Bounded by special circumstances or time limit



CONDITIONS OF AL-WAKALAH

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◆ Conditions related to contracting parties

- ➞ The agent must be someone that is capable of performing the responsibility and fulfill the minimum requirement (being sane, adult and smart)
- ➞ The authorizer has the freedom to terminate the contract or the service of the agent and the agent could also withdraw from the contract
- ➞ Except if the responsibility of the agent towards the other party is still pending or his obligation towards the other party has yet to be fulfilled.
- ➞ Principle should know the agent, either by name or physical appearance, vice versa.
- ➞ It is legal to entrust certain business dealings to an agent even if the authorizer is capable of performing the same deal himself.
- ➞ The Wakalah contract ends with the accomplishment of the entrusted tasks or mission





CONDITIONS OF AL-WAKALAH

DEFINITION

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◆ Conditions related to the object of agency contract

- ➞ The subject matter or business dealings must be clearly specified in the contract by the authorizer.
- ➞ The object of an agency contract should be eligible for legal authorization. It is not permissible to conduct Wakalah for physical prayers since the objective behind these prayers are to test and act as trials to the believers with the exception of certain prayers such as the Pilgrimage (Hajj), slaughtering animals for sacrifice (Qurban), distribution of Zakat, and fasting of Kafarah (on behalf of the dead)
- ➞ The entrusted agent will not be held responsible for any damage or disruption of the business deal except for cases of proven negligence or ignorance on part of the agent
- ➞ The agent is not permitted to act beyond what he was entrusted for by the authorizer in the first place except if it is an unlimited agency (Wakalah Mutlaqah).





MODERN APPLICATION

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- ✱ In the contemporary application, wakalah contract is widely used in structuring various Islamic banking, capital market and takaful fee-based products.
- ✱ Application of wakalah contract includes:
 - ➔ Wakalah bi al-istismar (agency for investment)
 - ➔ Sukuk
 - ➔ Letter of Credit (LC)





END OF CHAPTER

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FIQH MUAMALAT

فقه معاملات



WADI'AH

وديعة



اَوْنُوْرُسِيْتِي تِيْكْنُوْلُوْجِي مَارَا
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❖ CONDITIONS OF AL-WADI'AH

❖ TYPE OF AL-WADI'AH

❖ SALIENT ISSUES OF AL-WADI'AH

❖ MODERN APPLICATION

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DEFINITION

DEFINITION

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✦ Literally:

➞ To leave, quit, abandon etc.

✦ Technically:

➞ Representation in keeping possession or respectable private goods in a specific way.

➞ Any belonging left by the owner or his representatives with somebody to take care of them.

✦ Al-Wadi'ah is the commission given by the depositor to the depositary for holding his property in safe custody; al-amanah and done on the basis of charity



EVIDENCE

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APPLICATION

◆ Al-Quran:



﴿ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا

Indeed, Allah commands you to render trusts to whom they are due

فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ
وَلْيَتَّقِ اللَّهَ رَبَّهُ ۖ

And if one of you entrusteth to another let him who is trusted deliver up that which is entrusted to him (according to the pact between them) and let him observe his duty to Allah his Lord.



EVIDENCE

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

✦ Hadith:

- ➞ “Discharge the trust to the person who entrust it to you, and do not betray the one who betrays you”
 - ➞ (Sunan Abu Dawud)

✦ Ijma’:

- ➞ The scholars from every single era of the Islamic eras had came to a consensus on the permissibility of the Wadi'ah contract since it is desired by the people in general to the extent that it is actually an essential and vital contract for the society



PILLARS OF AL-WADI'AH

DEFINITION

1. Al – Muwaddi'

➔ Depositor, Owner of the property

EVIDENCES

2. Al – Wadi'

➔ Depositee, Custodian of the property

PILLARS

3. Al-Wadi'ah

➔ Property for safe keeping

CONDITIONS

4. Sighah

➔ Offer (Ijab)

TYPES

➔ Acceptance (Qabul)

APPLICATION



FLOWS OF AL-WADI'AH

DEFINITION

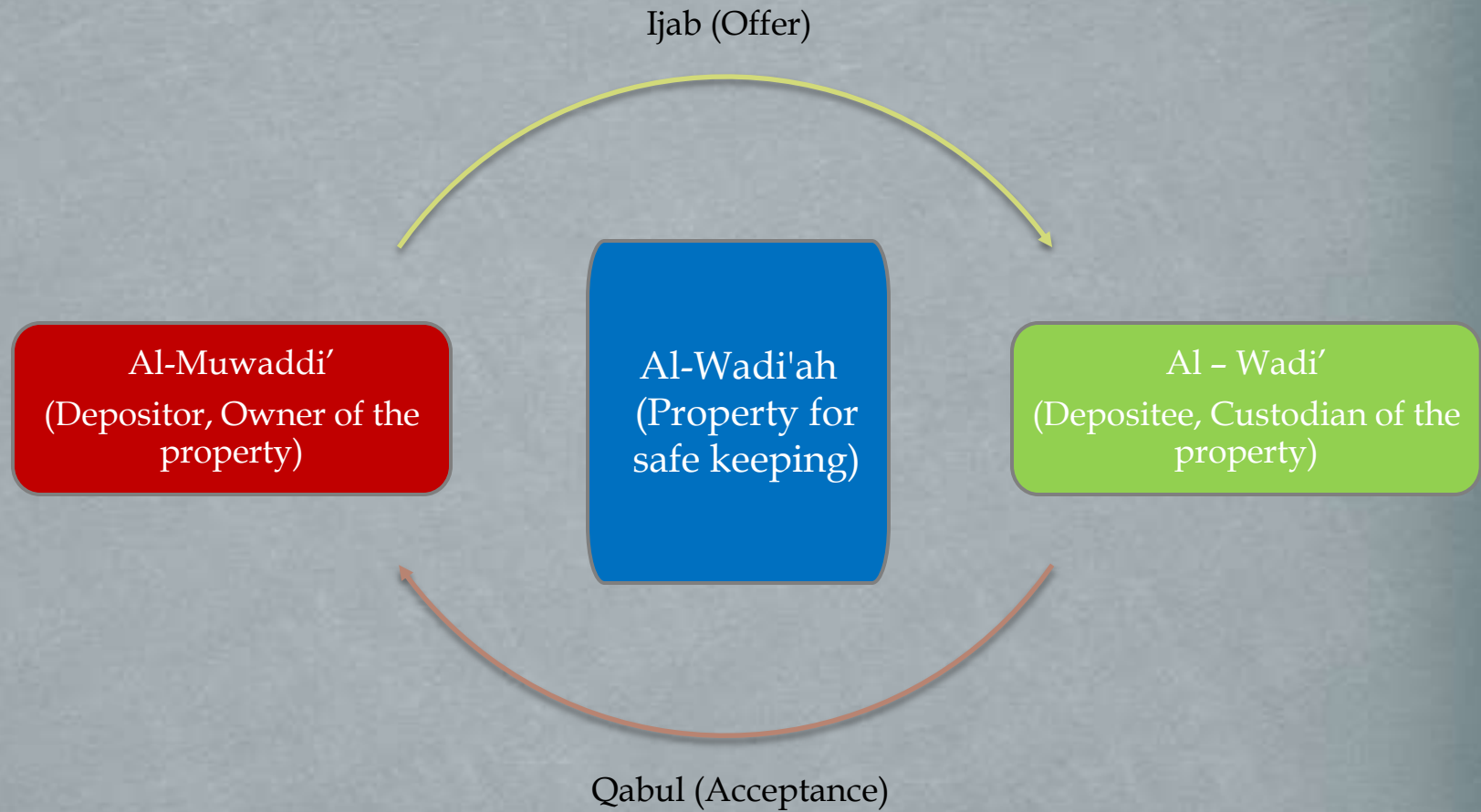
EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION





CONDITIONS OF AL-WADI'AH

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

◆ Conditions for Contracting Parties

- ➞ Al-muwaddi' is the depositor or the owner of the property
- ➞ Al-wadi' is the depositee or the custodian of the property
- ➞ Both parties must be person of sound mind and eligible to do a contract (ahliyaah al ada`a)
- ➞ Both parties must be eligible to be a wakil (agent) and trustee
- ➞ Al-wadi' must ensure his capability to safe-keep the deposit.



CONDITIONS OF AL-WADI'AH

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

❖ Conditions for Wadi'ah (Deposited Property)

- ➡ It must be valuable from Shariah view point, must be owned and deliverable
- ➡ It must be a form of property that can be possessed physically





TYPES OF WADI'AH

DEFINITION

✦ Wadi'ah Yadd al-Amanah

➔ Safe custody based on trust

EVIDENCES

✦ Wadi'ah Yadd al-Dhamanah

➔ Guaranteed safe custody

PILLARS

CONDITIONS

TYPES

APPLICATION





WADI'AH YADD AL-AMANAH

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

- ✱ Generally, wadi'ah is based on amanah (trust)
- ✱ It is charitable and divinely rewarded.
- ✱ Important features of wadi'ah yadd al-amanah:
 - ➞ The custodian should keep the deposits as if he is keeping and taking care of his own property.
 - ➞ The custodian should not responsible for any damage of the property so far it has not resulted from his negligence
 - ➞ The custodian is not entitled to any profits gained from the contract. Any benefits accrued from the deposit belong to the owner.
 - ➞ The custodian should not utilize or take benefit of the deposit.
 - ➞ The custodian should not transfer the deposit in the hands of others without permission of the depositor.
 - ➞ The custodian should not take the deposit in journey unless permission is given.
 - ➞ The custodian should return the deposit back to the owner upon request.





WADI'AH YADD AL-DHAMANAH

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

- ✱ This type of Wadi'ah is a combination of safekeeping (Wadi'ah) and guarantee (dhaman).
- ✱ The Wadi'ah is based on guarantee whereby the custodian guarantees the refund of the property kept with him and ensures to refund the item upon request.
- ✱ This type of wadia'ah facilitates wider application in the Islamic banking system.
- ✱ Important features of wadi'ah yadd al-dhamanah:
 - ➞ The custodian is entitled to use the deposited property for trading or any purposes.
 - ➞ The custodian has a right to any income derived from the utilization of the deposited item and liable for any damages or loss
 - ➞ The custodian owns the profit and under his discretion to give some portion of it as a gift (hibah) to the depositor. The gift cannot be in the form of a pre-agreed agreement.
 - ➞ The custodian must return the deposited property to the owner at any time upon the request of the depositor.





AL-WADI'AH CONTRACT : TRUST OR GURANTEE?

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

✱ Al-Wadi'ah: Act of Trust (amanah) or Act of Guarantee (dhamanah)?

- ➡ The jurists from different mazhabs had agreed that al-Wadi'ah is an act of good deed which is encouraged (mandub), and there is reward (in the hereafter) for its preservation.
- ➡ It is essentially an act which is based on pure trust(amanah) and not a guarantee (dhamanah).
- ➡ The deposittee is not liable to be the guarantor of the contract except for cases of carelessness or negligence.
- ➡ Hence, it is not legal to require the trustee to be a guarantor (accountable).





AL-WADI'AH: ACT OF TRUST BECOME ACT OF GUARANTEE

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

✱ Besides the cases of ignorance, contract of Wadi'ah could be transformed from trust (amanah) into guarantee (dhamanah) in the following cases if the depositor:

1. Ignores the protection and safe keeping of the deposited property
2. Deposits the property with somebody else, or not somebody who normally takes care of the depositor's property.
3. Benefits from the usage of the deposited property
4. Travels with the deposited property.
5. Refuses to return the deposited property to the depositor or withholds it even though he/she is capable of returning it.
6. Mixes the deposited property with other properties, which could not be recognized and distinguished from each other.
7. Commits certain conducts which are against the predetermined condition of the depositor.





PROFIT GAINED FROM THE USAGE OF MONEY UNDER AL-WADI'AH

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

1.	Al-Malikiah , Abu Yusof, Al-Laiths and Sufyan	The profit is for the depositor who traded the cash
	REASON:	
2.	1. The agent (depositor) is the guarantor and custodian of the money until it is returned back to the real owner.	
	2. The depositor does not essentially enter the contract of Wadi'ah with the intention of gaining any profit but with the purpose of safe guarding their deposited property. Hence, they should be given their original property without any amount of profit.	
3.	Abu Hanifah	The depositor should donate the profit without benefiting from the proceeds
	REASON:	
3.	1. The revenues were earned through an illicit gain.	
	2. If it is forbidden to sell the Wadi'ah property, the acquired profit would be considered as an illicit gain which could only be purified through donation and charity.	
3.	Others	The profit will be shared and split between the depositor and depositor on the basis of Mudharabah contract.



MODERN APPLICATION

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

✦ Responsibility of an Islamic Bank is considered as Yad Dhamanah when:

- ➞ Bank imposes certain fee on the safe keeping of the items and provides a special place for the safe custody of these items.
- ➞ The bank will be held responsible for the replacement of these items in cases of loss, damage or destroy even if these disaster occur unintentionally or due to negligence.
- ➞ Bank uses the cash money for business purposes. In this case, the bank is obligated to fully return the al-Wadi'ah money that has been used back to the owner, regardless of whether the bank had made any profit or even loss from the business venture using the al-Wadi'ah money.
- ➞ This means that any profit would be owned by the bank and they have the right to give all or part of the proceeds back to the depositor based on their discretion as a gift or token which are not promised earlier





MODERN APPLICATION

DEFINITION

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TYPES

APPLICATION

❖ Al-Wadi'ah Current Account

- ➔ Islamic Bank mobilizes customers' deposits in Current Account under the principles of Al-Wadi'ah Yad Dhamanah (guaranteed custody).
- ➔ It is based on the combination of contract of custody (al-Wadi'ah) and guarantee (Yad Dhamanah).
- ➔ Bank receives deposits from its customers who want to make a safe custody of their funds and utilizing the services provided under the scheme of a current account.
- ➔ The bank then will ask permission to utilize their funds. However, the customers may withdraw their saving any time they desire.
- ➔ All the profit generated by the bank from the use of funds belongs to the bank.
- ➔ The bank provides cheque books and other services provided by conventional bank to the current account.





MODERN APPLICATION

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

✦ Al-Wadi'ah Saving Account

- ➞ Islamic Bank mobilizes customers' deposits in Savings Account under the principles of Al-Wadi'ah Yad Dhamanah (guaranteed custody).
- ➞ It is based on the combination of contract of custody (al-Wadi'ah) and guarantee (dhamanah)
- ➞ Bank accepts deposits from its customers who want to make a safe custody of their fund
- ➞ Profit generated by the bank from the use of such funds belong to the bank.
- ➞ Bank may at his discretion reward the customer by returning a portion of profits generated from the use of their funds from time to time.
- ➞ Bank provides its customers with saving passbook and other usual services provided for saving accounts by the conventional banks. ah).





DIFFERENCES BETWEEN DEPOSITS UNDER ISLAMIC AND CONVENTIONAL BANKING

DEFINITION

EVIDENCES

PILLARS

CONDITIONS

TYPES

APPLICATION

CONVENTIONAL		ISLAMIC
Loan contract	CONTRACT	Wadi'ah (safe-keeping) contract
Lender – Borrower	RELATIONSHIP	Depositor – Depositee
Deposits are paid interest	INCOME	Deposits are not entitled to any income
Conventional banks must give the depositors their interest payment	OBLIGATION	Islamic banks may give the depositor a share of the profits generated at their discretion
Deposits are liability products of a bank	PRODUCTS	Deposits are either a trust or guarantee products of a bank



END OF CHAPTER

DEFINITION

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FIQH MUAMALAT فقه معاملات

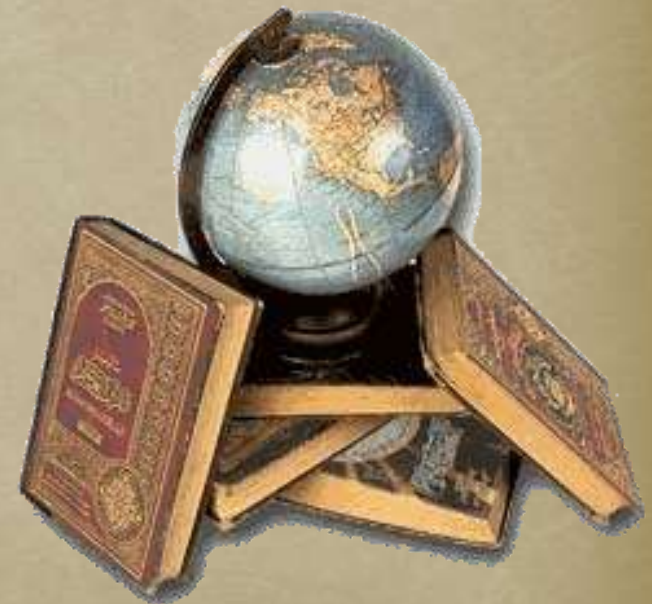


AL-KAFALAH

الكفالة



اُونِيُوَرْسِيْتِي تِيكْنُولُوجِي مَارَا
UNIVERSITI
TEKNOLOGI
MARA





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- ❖ DEFINITION
- ❖ EVIDENCE
- ❖ PILLARS OF AL-KAFALAH
- ❖ TYPES OF AL-KAFALAH
- ❖ ADVANTAGE OF AL-KAFALAH
- ❖ CONDITIONS OF AL-KAFALAH
- ❖ APPLICATION OF AL-KAFALAH





AL-KAFALAH

DEFINITION

❖ Kafalah

➔ Conjoining of the guarantor's liability of the guaranteed

EVIDENCES

❖ Dhaman

➔ Guarantee for future obligations involving property such as debt obligation, the return of borrowed property, the delivery of products, payment for purchase of products or services or the security of goods.

PILLARS

TYPES

❖ Hamalah

➔ Guarantee for future obligations involving diyat (blood-money)

CONDITIONS

APPLICATION





DEFINITION

DEFINITION

EVIDENCES

PILLARS

TYPES

CONDITIONS

APPLICATION

- ✦ Kafalah comes from the root word kafala (كفل) which means junction – joining combination responsibility or suretyship.

- ✦ Literally

- ➞ Guarantee, bail, surety, responsibility, suretyship

- ✦ Technically

- ➞ The pledge given by the guarantor/surety (al-kafil) to a creditor (al-makful lah) on behalf of the principal debtor (al-makful anh) to secure that the guaranteed (al-makful bih) i.e the debtor, will be present at a definite place, e.g. to pay his debt, or fine, or, in the case of retaliation, to undergo punishment.

- ✦ The SAC of BNM :

- ➞ A guaranteed contract on a certain asset, usufruct and/or service provided by a guarantor to the parties involved





EVIDENCE

✦ Al-Quran

DEFINITION

EVIDENCES

PILLARS

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APPLICATION

قَالُوا نَفَقْدُ صُوعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ ﴿٧٢﴾

72. They said, "We are missing the measure of the king. And for he who produces it is [the reward of] a camel's load, and I am responsible for it."

قَالَ لَنْ أَرْسِلَهُ مَعَكُمْ حَتَّى تُؤْتُونِ مَوْثِقًا مِنْ اللَّهِ لَتَأْتُنِي بِهِ إِلَّا أَنْ تُحَاطَ بِكُمْ فَلَمَّا آتَوْهُ مَوْثِقَهُمْ قَالَ اللَّهُ عَلَى مَا نَقُولُ وَكِيلٌ ﴿٦٦﴾

66. [Jacob] said, "Never will I send him with you until you give me a promise by Allah that you will bring him [back] to me, unless you should be surrounded by enemies." And when they had given their promise, he said, "Allah, over what we say, is Witness."





EVIDENCE

DEFINITION

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◆ Hadith

- ➞ The prophet (s.a.w) said to the effect, “The Guarantor is the debtor”
- ➞ Narrated from Salamah bin al-Akwa', he says: “Once we were with Prophet (s.a.w), then a group of people came with a funeral procession and said “O prophet (s.a.w), please conduct the funeral rites for this corpse.”. He asked: “Has he left anything?” They replied: “Nothing.” Then he asked: “has he left any debt?” They replied: “Yes, three dinar,” then the Prophet (s.a.w) said: “You should pray for him.” Then Abu Qatadah said: O Prophet (s.a.w) please pray for him, I bear the liability of the debt,” Then the Prophet (s.a.w) prayed for the corpse.
- ➞ (Narrated by al-Bukhari)
- ➞ Ijma'
 - ➞ The scholars of Islam unanimously agreed on the legitimacy of al-kafalah in principle since it is a necessity in the society





PILLARS OF AL-KAFALAH

DEFINITION

EVIDENCES

PILLARS

TYPES

CONDITIONS

APPLICATION

1. Guarantor/surety (al-kafil)

- ➔ A person who gives the guarantee is also called surety. A person who agrees to be responsible for another person's liability especially paying for his debt

2. Creditor (al-makful lah)

- ➔ A creditor to whom the guarantee is given

3. Principal debtor (al-makful anh)

- ➔ The person in respect of whose default the guarantee is given. He is also called the principal debtor.

4. Guaranteed (al-makful bih) i.e the debtor, things

- ➔ The claim itself whether it relates to the person or property.

5. Sighah

- ➔ Offer
- ➔ Acceptance





FLOWS OF AL-KAFALAH

DEFINITION

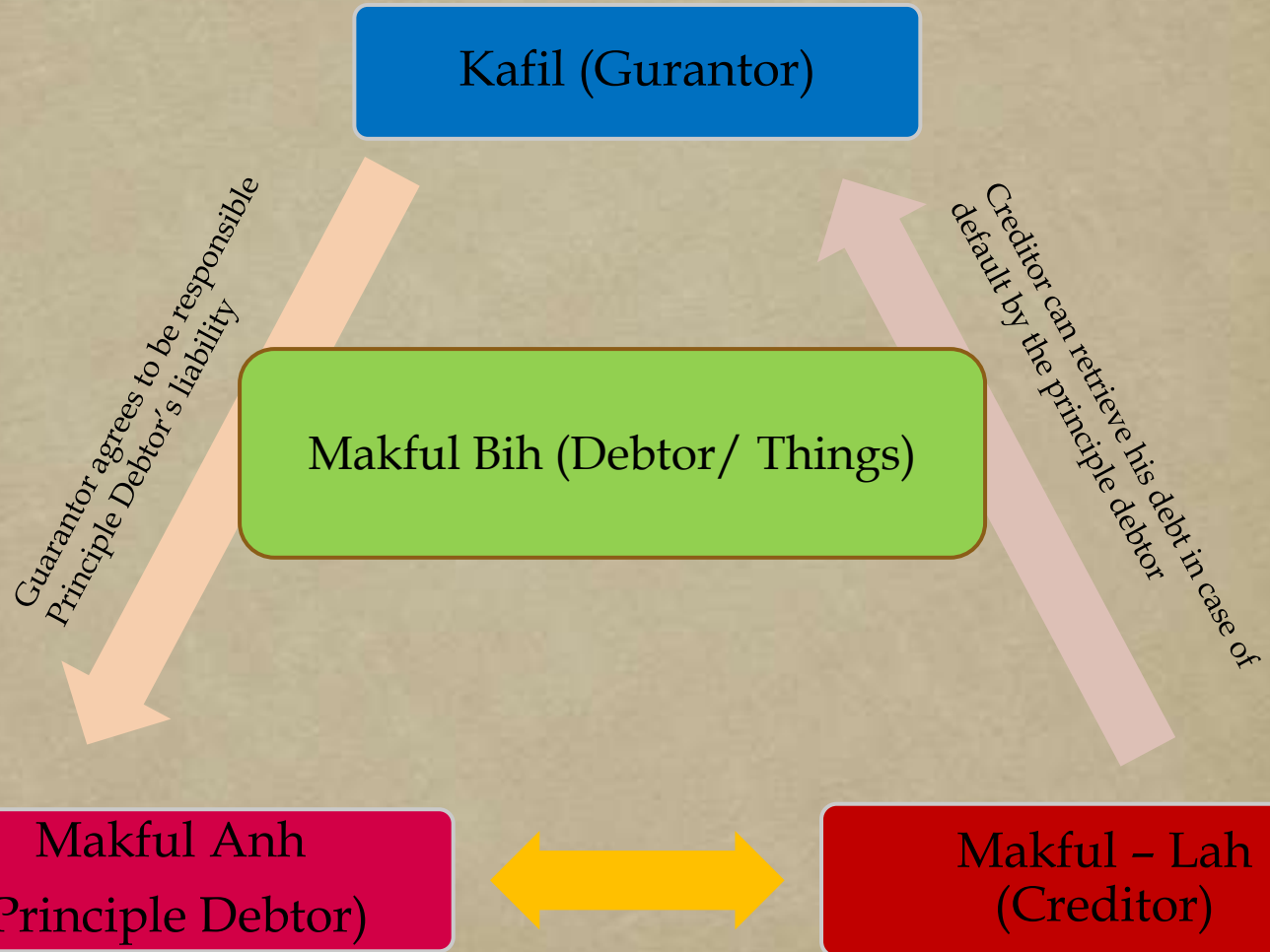
EVIDENCES

PILLARS

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TYPES OF AL-KAFALAH

DEFINITION

❖ Al-Kafalah bi al-nafs (الكفالة بالنفس)

- ➔ Guarantee to bring someone to a specific authority, such as the judiciary

EVIDENCES

❖ Al-Kafalah bi al-mal (الكفالة بالمال)

- ➔ Guarantee to return an asset to its owner
- ➔ Can be divided into three main categories:

PILLARS

1. Kafalah bi al-dayn

- ➔ Guarantee of repayment of another party's loan obligation

TYPES

2. Kafalah bi al-'ayn/ kafalah bi al'-taslim

- ➔ Guarantee of payment for an item or a guarantee of delivery in a transaction

CONDITIONS

3. Kafalah bi al-darak

- ➔ Guarantee that an asset is free from any encumbrances – specific for transactions that involve the transfer of titles of rights and ensures that an asset is free from any encumbrances

APPLICATION





AL-KAFALAH BI AL-NAFS

DEFINITION

EVIDENCES

PILLARS

TYPES

CONDITIONS

APPLICATION

- ◆ Guarantee of Person
- ◆ In Suretyship for a person the guarantor is assuming the responsibility to make sure the presence of the principal in a lawsuit.
- ◆ This is also possible in cases where the principal owes the creditor.
- ◆ The guarantor is required only to make sure the presence of the person.
- ◆ He is not liable to settle the debt on behalf of the principal.
- ◆ If the principal dies the guarantor is not bound to pay on his behalf. This is because the guarantee given is for the presence of the principal and not for the settlement of his debt.





AL-KAFALAH BI AL-MAL

DEFINITION

EVIDENCES

PILLARS

TYPES

CONDITIONS

APPLICATION

- ✱ Kafalah for the property can be both for the settlement of a debt (dain) or a guarantee that a certain specific thing ('ain) would be returned.
- ✱ In this case a guarantor is not freed of from liability if the creditor or the owner of the thing dies. The heirs of the creditor or the owner of the thing can demand that the guarantor settle the debt or return the thing.
- ✱ For instance, the guarantor is liable to make sure that a certain property bought by the buyer will be returned to him. The creditor has the option of demanding repayment from either the principal or the guarantor.





EFFECTS OF AL-KAFALAH

DEFINITION

EVIDENCES

PILLARS

TYPES

CONDITIONS

APPLICATION

- ✱ Once a valid kafalah is concluded it establishes a right to the creditor to claim the debt from the guarantor. The principal debtor is not released from the debt.
- ✱ The creditor has an option whether to demand the payment of debt from the principal debtor or from the guarantor.
- ✱ Kafalah is a gratuitous contract. This means that the service rendered by the guarantor is done freely without any reward or payment. However, it is possible that a guarantor may demand a certain fee for his service.





THE ADVANTAGE OF AL-KAFALAH

DEFINITION

- ✱ Kafalah is gratuitous contract and authenticate/ security contract

EVIDENCES

- ✱ Creditor:

- ➡ Could authenticate the loan repayment and ensure that he (the creditor) can retrieve his money back by demanding the payment from the guarantor in case of default payment by the debtor/ pledger
- ➡ Entitles the creditor to call upon either the debtor or the guarantor to perform the obligation and demand from one will not affect his right to go after the other if the obligation is not fully satisfied

PILLARS

TYPES

CONDITIONS

APPLICATION





THE ADVANTAGE OF AL-KAFALAH

DEFINITION

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APPLICATION

◆ Debtor

- ➞ Minimize and spread his risk because the guarantor by his guarantee, joined his liability to the creditor
- ➞ Can convince the creditor to lend him the money since he has somebody to back him up as the guarantor of payment. Nobody will normally lend him any amount of money if he has nobody that can support him and perform the obligation on his behalf in case of default





CONDITIONS OF AL-KAFALAH

DEFINITION

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CONDITIONS

APPLICATION

★ Guarantor

- ➞ Has the capacity and capability to be a guarantor
- ➞ Has the can't withdraw or pullback after the loan agreement has been sealed or after the money has been given to the debtor
- ➞ No limit to the number of people that can be a guarantor to the debtor
- ➞ Not forced or threatened by anybody to be the guarantor





CONDITIONS OF AL-KAFALAH

DEFINITION

EVIDENCES

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CONDITIONS

APPLICATION

✱ Creditor

- ➞ Must be known by the guarantor
- ➞ Has the right to claim the debt from either the debtor or the guarantor in case of default
- ➞ Can relief the guarantor from his obligation but the debtor is still obligated to settle his debt
- ➞ Can relief the debtor from his obligation and in this case, the guarantor is no longer obliged to settle the debt on behalf of the debtor





CONDITIONS OF AL-KAFALAH

DEFINITION

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APPLICATION

★ Guaranteed Object/ Asset

- ➔ Object must be an established liability (fungible. Non-fungible, a person or an action)
- ➔ Object of financial guarantee must be possible to collect from the guarantor.
- ➔ A guaranteed financial debt must be valid and binding liability





MODERN APPLICATION

DEFINITION

EVIDENCES

PILLARS

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CONDITIONS

APPLICATION

◆ Two ways of application of al-kafalah in IFI

- ➞ When the financial institutions act as a guarantor, where the guarantee is for its customer to a third party. Its a recourse guarantee. AAOIFI stipulates that only recourse could be done by a financial institution unless its shareholders and investors have authorized to make such benevolent donations.
- ➞ Guarantee contracts
 - ➞ Murabaha
 - ➞ Ijarah
 - ➞ Salam
 - ➞ Istisna'
 - ➞ Sharikah and Mudarabah,
 - ➞ Guarantee in documentary credit,
 - ➞ Credit card based on contract of kafalah.





END OF CHAPTER

DEFINITION

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FIQH MUAMALAH

ISLAMIC BUSINESS TRANSACTION



CHAPTER FIVE

AL-KAFALAH



CONTENT

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- ✦ DEFINITION
- ✦ EVIDENCE
- ✦ TYPES OF AL-KAFALAH
- ✦ ADVANTAGE OF AL-KAFALAH
- ✦ CONDITIONS OF AL-KAFALAH
- ✦ APPLICATION OF AL-KAFALAH





AL-KAFALAH

DEFINITION

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CONDITIONS

APPLICATION

✱ Kafalah

- ➡ Guarantee for future obligations involving human beings such as bailing to ensure the attendance of the accused criminals to the court for judgement

✱ Dhamanah

- ➡ Guarantee for future obligations involving property such as debt obligation, the return of borrowed property, the delivery of products, payment for purchase of products or services or the security of goods.

✱ Hamalah

- ➡ Guarantee for future obligations involving diyat (blood-money)





DEFINITION

DEFINITION

EVIDENCES

TYPES

ADVANTAGE

CONDITIONS

APPLICATION

- ✱ Kafalah comes from the root word kafala (كَفَلَ) which means junction – joining combination responsibility or suretyship.
- ✱ Legally kafalah means the joining of one obligation to another obligation with regard to a claim on.
- ✱ Literally
 - ➡ Guarantee, bail, surety, responsibility, suretyship
- ✱ Technically
 - ➡ The pledge given by the guarator/surety (al-kafil) to a creditor (al-makful lah) on behalf of the principal debtor (al-makful anh) to secure that the guaranteed (al-makful bih) i.e the debtor, will be present at a definite place, e.g to pay his debt, or fine, or, in the case of retaliation, to undergo punishment.
- ✱ In kafalah a person joins another person in undertaking certain obligation. Consequently, both persons become jointly liable to meet any claim that may arise from this obligation





PILLARS OF AL-KAFALAH

DEFINITION

EVIDENCES

TYPES

ADVANTAGE

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- ✱ Guarator/surety (al-kafil)
 - ➔ A person who gives the guarantee is also called called surety. A person who agrees to be responsible for another person's liability especially paying for his debt
- ✱ Creditor (al-makful lah)
 - ➔ A creditor to whom the guarantee is given
- ✱ Principal debtor (al-makful anh)
 - ➔ The person in respect of whose default the guarantee is given. He is also called the principal debtor.
- ✱ Guaranteed (al-makful bih) i.e the debtor,things
 - ➔ The claim itself whether it relates to the person or property.



FLOWS OF AL-KAFALAH

DEFINITION

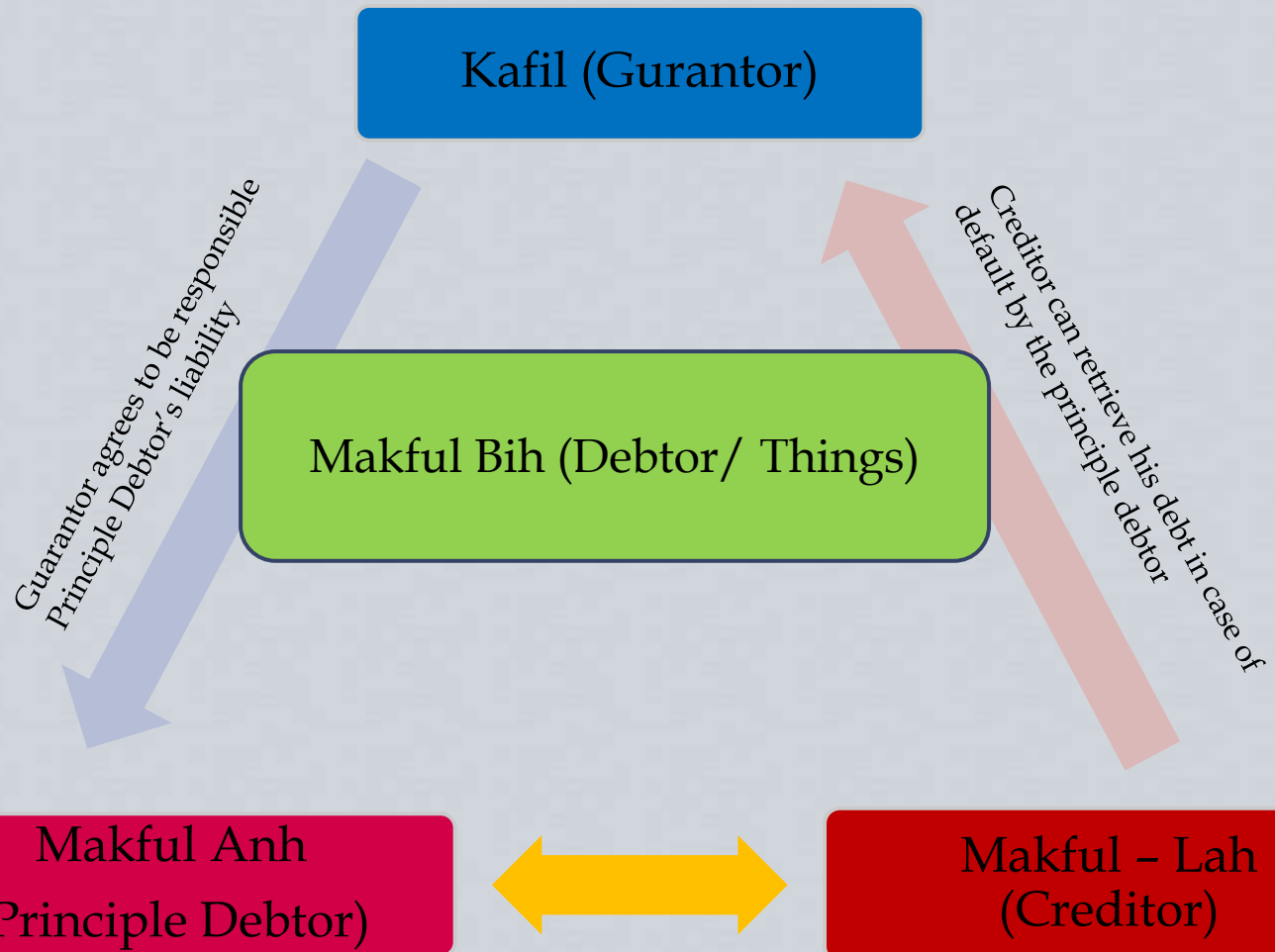
EVIDENCES

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EVIDENCE

◆ Al-Quran

DEFINITION

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CONDITIONS

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قَالُوا نَفَقْدُ صُوعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ ﴿٧٢﴾

72. They said, "We are missing the measure of the king. And for he who produces it is [the reward of] a camel's load, and I am responsible for it."

قَالَ لَنْ أَرْسِلَهُ مَعَكُمْ حَتَّى تُؤْتُونِ مَوْثِقًا مِنْ اللَّهِ لَتَأْتُنِي بِهِ إِلَّا أَنْ تُحَاطَ بِكُمْ فَلَمَّا آتَوْهُ مَوْثِقَهُمْ قَالَ اللَّهُ عَلَى مَا نَقُولُ وَكِيلٌ ﴿٦٦﴾

66. [Jacob] said, "Never will I send him with you until you give me a promise by Allah that you will bring him [back] to me, unless you should be surrounded by enemies." And when they had given their promise, he said, "Allah, over what we say, is Witness."



EVIDENCE

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✦ Hadith

- ➡ The prophet (s.a.w) said to the effect, “The Guarantor is the debtor”
- ➡ Salamah al-Akwa’ narrated that: The Prophet (s.a.w) was presented with a corpse of a man to be prayed upon (before the burial). He (s.a.w) asked: “Did he leaving anything?” They answered: “Nothing at all!” He (s.a.w) asked: “Is he owing anything?” They answered: “Yes indeed, he owes 2 gold dinars: He (s.a.w) said: “Proceed with the funeral prayer with your friend (without me)” Abu Qatadah said: “o the messenger of Allah, I will be guarantor (for the repayment) of those 2 dinars” After that, the Prophet (s.a.w) performed the funeral prayer for him

✦ Ijma’

- ➡ The scholars of Islam unanimously agreed on the legitimacy of al-kafalah in principle since it is a necessity in the society





TYPES OF AL-KAFALAH

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◆ Al-Kafalah Bi Al-nafs

- ➔ Guarantee of Person
- ➔ In Suretyship for a person ()the guarantor is assuming the responsibility to make sure the presence of the principal in a lawsuit.
- ➔ This is also possible in cases where the principal owes the creditor.
- ➔ The guarantor is required only to make sure the presence of the person.
- ➔ He is not liable to settle the debt on behalf of the principal.
- ➔ If the principal dies the guarantor is not bound to pay on his behalf. This is because the guarantee given is for the presence of the principal and not for the settlement of his debt.





TYPES OF AL-KAFALAH

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◆ Al-Kafalah Bi Al-mal

- ➔ Kafalah for the property () can be both for the settlement of a debt (dain) or a guarantee that a certain specific thing ('ain) would be returned.
- ➔ In this case a guarantor is not freed of from liability if the creditor or the owner of the thing dies. The heirs of the creditor or the owner of the thing can demand that the guarantor settle the debt or return the thing.
- ➔ For instance, the guarantor is liable to make sure that a certain property bought by the buyer will be returned to him. The creditor has the option of demanding repayment from either the principal or the guarantor.





EFFECTS OF AL-KAFALAH

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- ✦ Once a valid kafalah is concluded it establishes a right to the creditor to claim the debt from the guarantor. The principal debtor is not released from the debt.
- ✦ The creditor has an option whether to demand the payment of debt from the principal debtor or from the guarantor.
- ✦ Kafalah is a gratuitous contract. This means that the service rendered by the guarantor is done freely without any reward or payment. However, it is possible that a guarantor may demand a certain fee for his service.





THE ADVANTAGE OF AL-KAFALAH

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- ✦ Kafalah is gratuitous contract and authenticate/ security contract
- ✦ Creditor:
 - ➡ Could authenticate the loan repayment and ensure that he (the creditor) can retrieve his money back by demanding the payment from the guarantor in case of default payment by the debtor/ pledgor
 - ➡ Entitles the creditor to call upon either the debtor or the guarantor to perform the obligation and demand from one will not affect his right to go after the other if the obligation is not fully satisfied





THE ADVANTAGE OF AL-KAFALAH

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◆ Debtor

- ➡ Minimize and spread his risk because the guarantor by his guarantee, joined his liability to the creditor
- ➡ Can convince the creditor to lend him the money since he has somebody to back him up as the guarantor of payment. Nobody will normally lend him any amount of money if he has nobody that can support him and perform the obligation on his behalf in case of default





CONDITIONS OF AL-KAFALAH

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◆ Guarantor

- ➔ Has the capacity to be a guarator
- ➔ Has the capability
- ➔ Can't withdraw or pullback after the loan agreement has been sealed or after the money has been given to the debtor
- ➔ No limit to the number of people that can be a guarator to the debtor
- ➔ Not forced or threatened by anybody to be the guarantor





CONDITIONS OF AL-KAFALAH

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◆ Creditor

- ➡ Must be known by the guarantor
- ➡ Has the right to claim the debt from either the debtor or the guarantor in case of default
- ➡ Can relieve the guarantor from his obligation but the debtor is still obligated to settle his debt
- ➡ Can relieve the debtor from his obligation and in this case, the guarantor is no longer obliged to settle the debt on behalf of the debtor





MODERN APPLICATION

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◆ Letter of Guarantee (LG)

- ➞ Principle of kafalah has been used in Guarantee facilities as a basis in structuring the Letter of Guarantee
- ➞ Guarantee facilities refers to contract or assurances made by Islamic bank to 3rd parties.
- ➞ Customer will fulfill his/ her obligations towards the respected third party.
- ➞ In this assurance, bank agrees to assume the liability of its customer in the case of default or breaching of contract as agreed between customer and the 3rd party.
- ➞ The issuance of LG usually subject to various terms and conditions. A common practice is that the bank would require customer to cover fully or at least partially value of the LG.





END OF CHAPTER

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FIQH MUAMALAT

فقه معاملات



AL-RAHN

الرهن



اَوْنُوْرُسِيْتِيْ تِيْكْنُوْلُوْجِيْ مَارَا
UNIVERSITI
TEKNOLOGI
MARA





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- ✦ DEFINITION
- ✦ EVIDENCE
- ✦ PILLARS OF AL-RAHN
- ✦ BENEFITS OF RAHN
- ✦ CONDITIONS OF RAHN
- ✦ APPLICATION OF AL-RAHN





DEFINITION

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◆ Literally

➔ Constancy and continuity, or holding and binding.

◆ Technically

➔ Taking a property as a security against a debt, whereby the secured property can be utilized to repay the debt in the case of non payment.

◆ Also termed as pawning, mortgage, collateral, charge, lien and pledge.

◆ Rahn literally means to detain a thing. Legally, it is the detention of a corporeal property on account of a claim such as a debt which may be satisfied out of that property.





NATURE OF AL-RAHN

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CONDITIONS

APPLICATION

- ✱ Al-rahn in Arabic means al-tsubut wa al-dawam (fixed and eternal).
- ✱ Rahn is classified as a it does not require any financial obligation on the part of murtahin (creditor) when the rahin (debtor) gives him the pawned object.
- ✱ The purpose of rahn is to convince the creditor that the debt will not simply disappear or vanish in case of default payment on part of the debtor
- ✱ This is because, in case of non-payment, the pledged property will be sold or auctioned and the proceeds will be taken by the creditor to compensate for the losses as a result of the bad debt
- ✱ However the creditor is only entitled to the total amount owed to him by the debtor and the balance will be returned back to the owner of the pledged property (the debtor)





EVIDENCE

◆ Quran

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﴿ وَإِنْ كُنْتُمْ عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَيْنْ مَقْبُوضَةً ﴾

283. And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken

- ➔ The Quran refers to the idea of pawning as 'mortgage with possession' (rihanun maqbudha). Quran also supports the idea of furnishing a pledge against a debt.

﴿ كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ ﴾

38. Every person is a pledge for what He has earned

- ➔ According to Quran verses, every soul is in pledge or rahina for its deeds. {Quran, 74:38}



EVIDENCE

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APPLICATION

◆ Hadith

- ➞ The issue of mortgage is not only an issue for “modern society”. In Islam, the history of mortgage has been being since the time of Prophet Muhammad.
- ➞ From Aisha that Allah's Apostle bought some foodstuff from a Jew and mortgaged his armor to him.”
- ➞ From Anas that Allah’s Apostle mortgaged his armor to a Jew in Madinah and bought barley bread from the Jew for his family.”
- ➞ and in the saying of the Prophet, “the soul of a believer is marhuna or pledged for the debt until it is paid off”.

◆ Ijma

- ➞ Muslim jurist unanimously agreed on the legitimacy of the rahn contract





PILLARS OF RAHN

DEFINITION

1. Rahin

➞ Pledgor – a person who gives rahn/ the debtor

EVIDENCES

2. Murtahin

➞ Pledgee – a person who takes rahn/ the creditor

PILLARS

3. Marhun

➞ Pledged asset – a property to be pledged

BENEFITS

4. Marhun Bih

➞ The liability of rahn/ the debt

CONDITIONS

5. Sighah

➞ Ijab (Offer)

➞ Qabul (Acceptance)

APPLICATION





FLOWS OF A-RAHN

DEFINITION

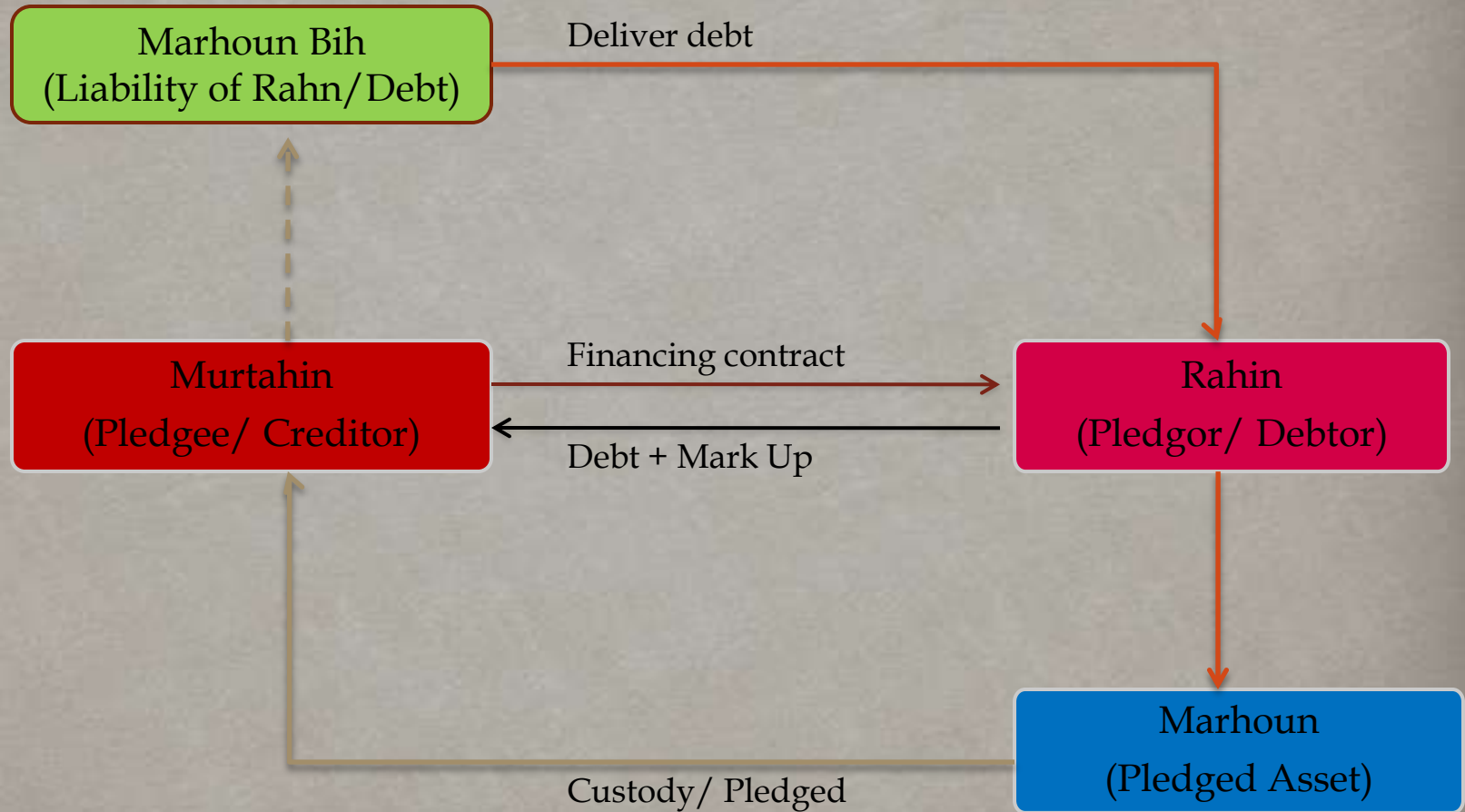
EVIDENCES

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THE USE OF PLEDGE BY THE PLEDGEE

DEFINITION

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APPLICATION

- ✱ The pledge is considered a trust in the hands of the pledgee. He is responsible for its safety and preservation. However, he is liable if the pledged property is damaged or destroyed as a result of his negligence.
- ✱ Pledge is intended to be a security for the payment of debt. It is not meant for investment and profitable use. As such a pledgee is not allowed to exploit or use the pledged property even with the permission of the pledger.
- ✱ Exploitation of the pledged property is prohibited based on the principle that “all loans that generate profit are usurious”.
- ✱ Thus, exploitation and profitable use of the pledge is considered usury.
- ✱ However, if the pledge is an animal that can be used for riding or milk, the pledgee may make use of it in return for its maintenance.





BENEFITS OF AL-RAHN

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APPLICATION

✦ Al-rahn - very useful contract; multi purpose tool that is beneficial and advantageous to both parties especially to the creditor

✦ Creditor

- ➔ Compared to the contract of kafalah, documentation of debt or providing witnesses, all these measures can never match security that Rahn provide for benefit of creditor
- ➔ Rahn is form of authentication of debt, which is under the custody of the creditor in return for his right claiming back his money from the debtor
- ➔ In case of default payment, the creditor could secure the loan repayment can retrieve back his money by selling off the pledged property with the consent from either the court or the debtor himself
- ➔ The creditor can also be assured that the debtor will not forget or take for granted to settle the loan since his valuable assets are still under the custody of the creditor/pledge.





BENEFITS OF AL-RAHN

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◆ Debtor

- ➞ Could get some fast cash by temporarily pledging his valuable items to the creditor
- ➞ Can convince the pledgee/creditor to lend him the money since he has something to offer in return as a guarantee of payment.





CONDITIONS OF AL-RAHN

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❖ Condition related to sighah

- ➔ Sighah of rahn should not be suspended by a condition or deferred to a future date.

❖ Condition related the contracting parties

- ➔ According to Shafie and Hanbali, both contracting parties must have a legal qualification (ahliyyah) as rahn regarded as non-obligatory voluntary action.
- ➔ According to Hanafi and Maliki, rahn from discerning child and a mentally incompetent person is valid upon the approval of his wali

❖ Condition related to the pawned object

- ➔ Being a valued property, a permissible item, exist in time of contract and able to be deliver
- ➔ Being precisely determined with regards to its essence, quantity and value and a non-fungible property and not usufruct
- ➔ Being a sufficient value to cover the debt amount and in the possession of the creditor
- ➔ Being pawned together if the object is naturally connected. Eg: tree with the fruits.





CONDITIONS OF AL-RAHN

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★ Condition related to the debt/ liability

- ➞ The underlying debt must be an established, binding and enforceable one, either through a loan, sale, or damages in the torts against a property.
- ➞ The underlying debt must be known and defined to both contracting parties; if one of the parties are uncertain of the debt, the pawning is considered invalid.
- ➞ The underlying debt must be matured/ binding or a about to be matured. Rahn is valid if the debt is based on the price of a binding sale or during option period prior to its bindingness as the sale contract is going to be binding after the option expires
- ➞ Shafie and Hanbali allows liability that based on usufruct in Rahn while Hanafi and Maliki prohibit its.

★ Condition related to the receipt/ possession of pawned object

- ➞ Permission of the debtor
- ➞ Eligibility of the contracting parties
- ➞ Permanency of possession





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APPLICATION

AL-RAHN	PRINCIPLES	CONVENTIONAL PAWNING
• Institution based eg: banks, co-operatives, YAPEIM, state government agencies etc	OPERATOR	• Sole proprietor based • Individual based
• Monthly safekeeping charges • No interest charges • Cheaper	CHARGES	• Interest is charged • More expensive rate
• Takaful coverage	INSURANCE	• Not covered • If the pedged items are lost, only a 25% compensation is offered
• Only pure gold accepted • Ornamented gemstones on gold items will not be valued • Gold plated items are not acceptable • Pound gold and white gold (platinum) not accepted	ITEMS	• Any valuable items



COMPARISON

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APPLICATION

AL-RAHN	PRINCIPLES	CONVENTIONAL PAWNING
• Must provide proof of ownership either through the letter of purchase/ receipt or letter of undertaking • If it belongs to someone else, a letter of consent/ approval from the owner is required	OWNERSHIP	• Not required to provide proof of ownership
• Up to 60%-70% of the value of pawned gold • Valuation based on the current market value	PAWNING VALUE	• Valuation is much lower than the market value • Average 30.5%
• Pledged items will be auction publicly • Transparent and notice will be sent	DEFAULT	• Not transparent
• The balance after the auction will be returned back by the company to the pledgor	BALANCE AFTER AUCTION	• The balance after the auction will not be returned back by the company to the pledgor



MODERN APPLICATION

DEFINITION

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✱ Rahn in the contemporary application may take either a form papers such as:

- ➔ Property documents
- ➔ Vehicle papers
- ➔ Sukuk
- ➔ Shared

✱ Or object like ornaments, jewelries and other valuables.





END OF CHAPTER

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FIQH MUAMALAH

ISLAMIC BUSINESS TRANSACTION



CHAPTER SIX

AL-RAHN



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✦ EVIDENCE

✦ PILLARS OF AL-RAHN

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✦ BENEFITS OF RAHN

✦ CONDITIONS OF RAHN

✦ APPLICATION OF AL-RAHN

CONDITIONS

COMPARISON

APPLICATION





DEFINITION

DEFINITION

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CONDITIONS

COMPARISON

APPLICATION

- ✱ Literally
 - ➞ constancy, or holding and binding.
- ✱ Technically
 - ➞ To make an object with economic values in Islamic law perspective as a trust for the payment of debts, so that enabling mortgagee (murtahin) to get all or a part of the debts from the object
- ✱ Rahn literally means to detain a thing. Legally, it is the detention of a corporeal property on account of a claim such as a debt which may be satisfied out of that property.





DEFINITION

DEFINITION

- ◆ Pledge is a security for the payment of a debt that will enable the lender to reclaim the debt or to satisfy it out of the pledged property.

EVIDENCES

- ◆ Al-rahn in Arabic means al-tsubut wa al-dawam (fixed and eternal).

BENEFITS

- ◆ Rahn is classified as a contract under category contract of security or contract pertaining to authentication

CONDITIONS

- ◆ The purpose of rahn is to convince the creditor that the debt will not simply disappear or vanish in case of default payment on part of the debtor

COMPARISON

- ◆ This is because, in case of non-payment, the pledged property will be sold or auctioned and the proceeds will be taken by the creditor to compensate for the losses as a result of the bad debt

APPLICATION

- ◆ However the creditor is only entitled to the total amount owed to him by the debtor and the balance will be returned back to the owner of the pledged property (the debtor)





EVIDENCE

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✦ Quran

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283. And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken

- ➔ The Quran refers to the idea of pawning as 'mortgage with possession' (rihanun maqbudha). Quran also supports the idea of furnishing a pledge against a debt.

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✦ Ijma

- ➞ Muslim jurist unanimously agreed on the legitimacy of the rahn contract





PILLARS OF RAHN

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➞ Pledgor – a person who gives rahn/ the debtor

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★ Murtahin

➞ Pledgee – a person who takes rahn/ the creditor

BENEFITS

★ Marhoun

➞ Pledged asset – a property to be pledged

CONDITIONS

★ Marhoun Bih

➞ The liability of rahn/ the debt

COMPARISON

★ Sighah

➞ Ijab (Offer)

➞ Qabul (Acceptance)

APPLICATION





FLOWS OF A-RAHN

DEFINITION

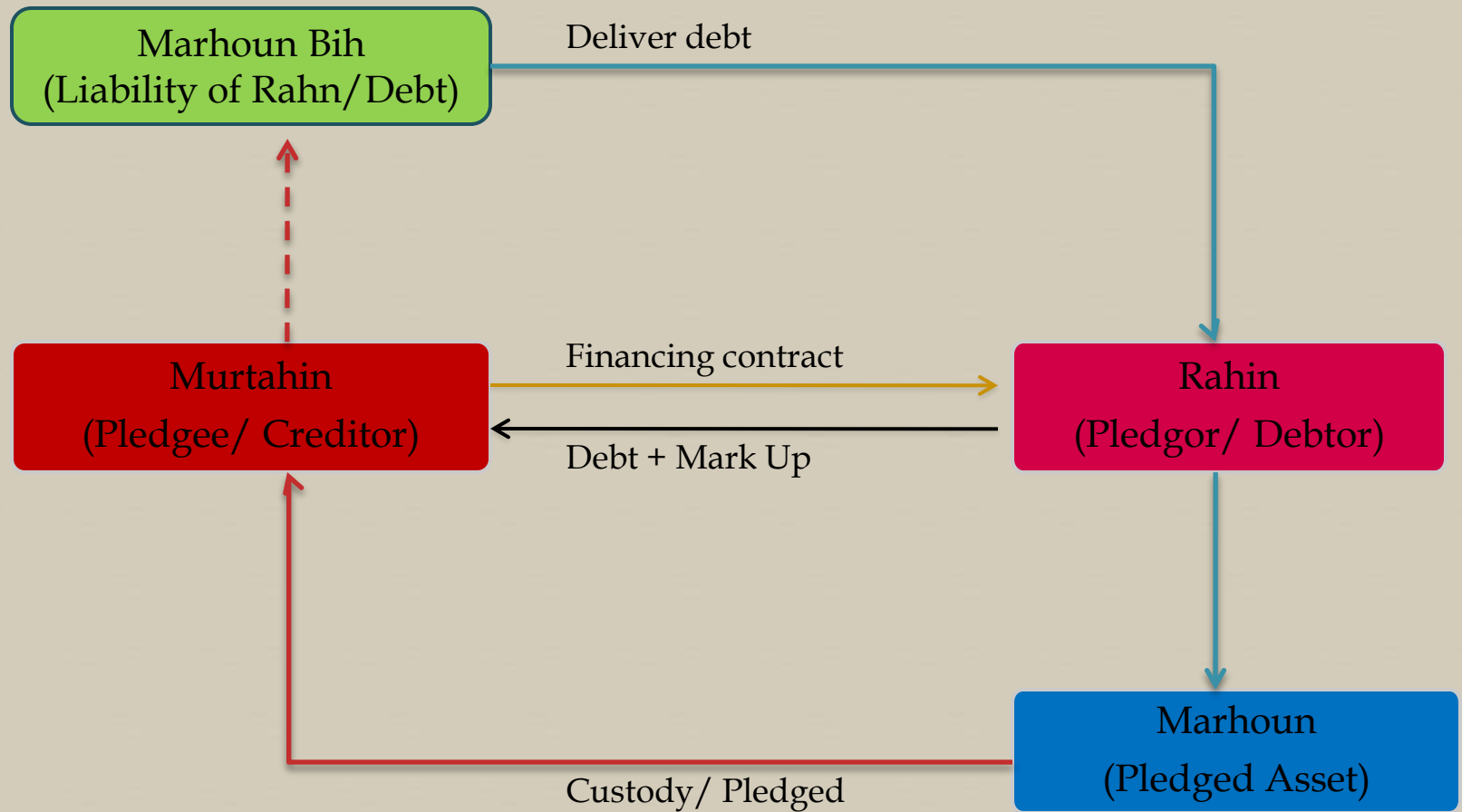
EVIDENCES

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THE USE OF PLEDGE BY THE PLDGEE

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- ✦ The pledge is considered a trust in the hands of the pledgee. He is responsible for its safety and preservation. However, he is liable if the pledged property is damaged or destroyed as a result of his negligence.
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- ✦ Exploitation of the pledged property is prohibited based on the principle that “all loans that generate profit are usurious”.
- ✦ Thus, exploitation and profitable use of the pledge is considered usury.
- ✦ However, if the pledge is an animal that can be used for riding or milk, the pledgee may make use of it in return for its maintenance.



BENEFITS OF AL-RAHN

DEFINITION

- ✦ Al-rahn - very useful contract; multi purpose tool that is beneficial and advantageous to both parties especially to the creditor

EVIDENCES

- ✦ Creditor

- Compared to the contract of kafalah, documentation of debt or providing witnesses, all these measures can never match security that Rahn provide for benefit of creditor

- Rahn is form of authentication of debt, which is under the custody of the creditor in return for his right claiming back his money from the debtor

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BENEFITS OF AL-RAHN

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◆ Debtor

- ➡ Could get some fast cash by temporarily pledging his valuable items to the creditor
- ➡ Can convince the pledgee/creditor to lend him the money since he has something to offer in return as a guarantee of payment.





CONDITIONS OF AL-RAHN

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1. Any object that can be sold can be pledged; and what cannot be sold cannot be pledged
2. A person can borrow something which he can pledge with whom he should specify to the lender
3. If the mortgagor and mortgagee agree to place the pledge with 3rd person, they cannot change this agreement as long as the 3rd person remain honest
4. If the mortgagor pay back the debt, the mortgage does not terminate; it will stay until the whole sum is paid back
5. The mortgagor cannot dispose the object by selling, granting, or endowing it
6. A pledge is a trust in the hands of mortgagee





COMPARISON

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CONDITIONS

COMPARISON

APPLICATION

AL-RAHN	PRINCIPLES	CONVENTIONAL PAWNING
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COMPARISON

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AL-RAHN	PRINCIPLES	CONVENTIONAL PAWNING
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APPLICATION

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END OF CHAPTER

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